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THE Public Interest

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Should We Replace the SAT?

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A Modest Remedy for Judicial Activism

Gary L. McDowell

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Editorial Office
10 East 53rd Street, N.Y. 10022

Subscription Department
The Public Interest
20th & Northampton Sts.
Easton, PA 18042

Newsstand Distributor
Bernhard DeBoer, Inc.
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A modest remedy for judicial activism

GARY L. McDOWELL

THE issue of judicial activism is hardly new to American politics. Every Court since *Chisholm v. Georgia* (1793)—the case which led to the Eleventh Amendment—has found itself immersed in the animating political issues of its age. While there is a strong tendency in American political thinking to view the judiciary as an institution "exterior to the state" and removed from the "sweaty crowd" and rancid stuff of everyday political life, the fact of the matter is that, by the nature of its business, the federal judiciary is preeminently a political institution.

Because the judiciary is a political institution, it has frequently been the object of political wrath. Thomas Jefferson complained of Chief Justice John Marshall that in his hands the Constitution was "nothing more than an ambiguous text, to be explained by his sophistry into any meaning which may subserve his personal malice"; Abraham Lincoln argued that Chief Justice Roger Taney, in his opinion in the case of *Dred Scott*, had done "obvious violence" to the "plain unmistakable language" of the Declaration of Independence; during the Progressive era, Senator Robert M. LaFollette characterized all federal judges as "petty tyrants and arrogant despots"; and President Eisenhower is reported to have concluded that his appointment of Earl Warren as Chief Justice of the Supreme

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Court was "the biggest damn fool mistake" he made during his presidency. There is a problem, however, in recognizing the Court's political position. That very recognition often serves only to blur the important line between proper and improper exercises of judicial power. Too often the debate over judicial activism and judicial restraint is dismissed as empty and spawned by rather superficial considerations of whose political "ox" is gored. This is a mistake. For judicial power *can* be abused, and when it is, it is important to articulate how and why, and, most importantly, what should be done about it.

Limiting jurisdiction is inappropriate

The past few years have seen an ever-increasing outpouring of Congressional proposals to curb the courts. Most of the proposals differ little in form or substance from those which have been a fairly regular feature of each Congress since the early controversial decisions of the Warren Court. In general, the proposals are aimed at single issues such as school desegregation, abortion, and prayer in public schools. They are, for the most part, attempts to curtail the jurisdiction of the federal courts in particular areas. Thus we find bills on abortion, bills on school prayer, bills on busing to achieve desegregation, and so forth. It is at best a piecemeal approach to a problem that demands a more thorough solution.

Present Congressional efforts to deal with judicial activism are troubling in two ways. First, they fail to reach to the heart of the matter. The real problem is not the exercise of judicial power in a particular case (*Roe v. Wade*, permitting abortions, for example) but the exercise of judicial power more broadly considered. By addressing judicial activism on the level of particular decisions, Congress is treating symptoms at the expense of curing causes. The most important issue is not how *Roe v. Wade* was decided but how the matter became a cause of action in the first place.

The second troubling aspect of recent court-curbing efforts is deeper yet. These efforts imply that the authority of the Court is not binding, that its decisions can be lightly dismissed or ignored. A case in point is the issue of school prayer. One of the proposals would remove federal court jurisdiction—at both the lower and the Supreme Court levels—to entertain such suits. But the plan would leave standing as good law the controlling Supreme Court decision banning prayer in public schools (*Engel v. Vitale*). The effect would be to say that although the decisions remain there will be

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no way to enforce them. As Kenneth Kay has pointed out, this is nothing more than allowing Congress to give the states a "knowing wink and say 'go ahead—they can't touch you now.'" In the end, such an arrangement would serve only to undermine the stature of the judiciary in American politics and respect for the rule of law. However much one might think that the Court has exceeded its legitimate authority in deciding certain issues such as school prayer, one should not be so rash in attempting to remedy the situation so as to lose the all-important veneration for the institution. For "Governments in general," Tocqueville noted, "have only two methods of overcoming the resistance of the governed: their own physical force and the moral force supplied to them by the decisions of courts."

The fundamental defect of most of the pending proposals is that they are imprudent. They are *insufficient* in that they fail to treat the causes of judicial activism at a level deep enough to make a permanent difference, and they are *excessive* in that they go so far as to seriously impair the proper functioning of the judiciary within the American political order. A more modest and ultimately more efficacious approach is to address the issue at the level of cause and to restructure the judicial process in such a way as to confine it to those issues with which it is best equipped to deal. The most successful remedy for judicial activism will be a *procedural* remedy.

The movement toward abstraction

Controlling the Court through putting back up some of the procedural fences is an idea amply supported by both American legal theory and experience—it makes sense in principle and it works in practice. From Felix Frankfurter to Joseph Story to James Kent—indeed, all the way back to Alexander Hamilton—it has been recognized that proper legal procedures are necessary to a proper exercise of judicial power. In his famous defense of the judiciary in *The Federalist* Hamilton summed it up this way:

> To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents which serve to define and point out their duty in every particular case that comes before them.

By turning its attention away from the more politically dramatic proposals for jurisdictional exceptions and focusing on the more mundane business of procedures and practices, Congress can direct its energies where they will be most successful. Through tightening up the judicial process Congress can effect a legitimate and safe

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restraint on the exercise of judicial power. For the current spate of judicial intrusiveness is the result of loose procedural arrangements that have allowed, even encouraged, a movement of judicial activity from deciding concrete cases to pondering abstract principles, and from clearly defined particular controversies that admit of *judicial decision* to considerations of broad policy questions that admit more of *political deliberation.*

There has been a steady movement from the concrete to the abstract in four areas of judicial procedure. In the area of *standing* there has been a movement from the traditional demand for a concrete legal interest toward the more abstract standards of "zones of interest" and "injury in fact." In the area of *class actions* there has been a shift from the standard of a clearly defined class with a strictly defined common legal interest toward more loosely defined classes presenting more abstract claims. In the area of *declaratory relief* the movement has been away from concrete standards of what constitutes a case or a controversy (an economic claim, for example) for the purposes of judicial resolution to more abstract standards (a violation of equal protection by a malapportioned legislative district). And in the area of *equitable relief* there has been a drastic movement away from a rather narrow understanding of equity jurisdiction as a proper means of vindicating concrete property rights (generally dealing with accidents, mistakes, frauds, and trusts) to a more amorphous understanding that equity jurisdiction is somehow competent to vindicate more abstract rights such as equality. In each instance Congress has the power —and, one could argue, the political responsibility—to return the Court to a more concrete exercise of its powers. I will consider each set of procedures separately.

Standing

In the area of standing to sue (a concept which Professor Paul Freund has labeled "among the most amorphous in the entire domain of public law") the Court endeavors to determine if a particular plaintiff has a sufficient interest in the case to warrant judicial intrusion. The Court asks if the plaintiff is a sufficiently adverse party with a vested legal interest in the outcome of a case or controversy that can be finally resolved by the courts. The doctrine of standing is an effort to distinguish a threshold procedural requirement from the actual merits, or substantive issues, of the case. The debate over whether such a distinction is possible

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need not detain us here. The important point is that the Court in fact *assumes* such a distinction can be made and has attempted to articulate standards to evaluate claims of standing. It is in those standards that looseness and ambiguity have developed.

Just how much the doctrine of standing has changed can be seen by comparing two cases. In the first, *Cherokee Nation v. Georgia* (1831), Justice Thompson argued that it is "only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings that courts of justice can interpose relief." In *Muskrat v. United States* (1911) the Court affirmed that "the judicial power . . . is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction." The same point, the demand for a clear legal interest susceptible of final judicial resolution, was made by Justice Frankfurter when he insisted that if no "common law right exists and no . . . constitutional or statutory interest has been created, relief is not available judicially."

The notion that there *had* to be a legal interest to establish standing has faded. In its place has come the more liberal (judicially speaking) standard of an "injury in fact." By this standard a previously existing legal right is not requisite for standing; a provable injury to *any* interest is sufficient. The dominant sentiment is that, in the absence of any Congressional exceptions to this new doctrine, the standard is merely, in Kenneth Culp Davis's words, "a judicial judgment as to whether the interest asserted is, in the circumstances, deserving of judicial protection." As a result, the Court has abandoned the sense of restraint that the legal interest standard demanded and willingly grants standing for interests that go far beyond what the old legal interest standard would ever have permitted.

This trend is seen most clearly in *United States v. SCRAP* (1973), in which a group of law students claimed they suffered an injury because of certain railroad surcharges permitted under an Interstate Commerce Commission order. They alleged that as a result of the surcharge they "'suffered economic, recreational, and aesthetic harm directly as a result of the adverse environmental impact of the railroad freight structure,' that each of its members was caused to pay more for finished products, that each of its members uses the forests, rivers, mountains, and other natural resources of the area . . . and that these uses have been adversely affected by increased freight rates."

The Court was impressed. Justice Stewart agreed that the effect

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of the allowed rates would result in the depletion of natural resources and, among other problems, increased litter in the national parks in the area to such an extent as to constitute a "specific and perceptible harm" to the members of SCRAP, a group whose interests, to the Court's way of thinking, were sufficiently distinct from the interests of the public at large to meet the threshold requirement for standing. Such a "specific and perceptible harm" as increased litter was indeed an "injury in fact" and enough to give SCRAP standing to sue. Thus, under the new standards of standing, a public interest group claiming what is at best an abstract injury—aesthetic damage to the environment—can press its policy views under the guise of a lawsuit and influence the course of public policy through judicial resolution.

As Justice Powell would endeavor to remind his brethren in *United States v. Richardson* (1974), the "relaxation of standing requirements is directly related to the expansion of judicial power." But the expansion has been accompanied by a transformation of judicial power as well, for the loose standards for standing have allowed the exercise of judicial power to move from the "determination of cases and controversies to explicit judicial guardianship of the public interest."

Judicial history makes clear that if there is to be a meaningful and stable standard for standing it will have to come from outside the Court itself. Constitutionally, under the grant of power by the Necessary and Proper Clause, Congress has the authority to impose minimum standards for what constitutes a case or controversy having access to the judicial process. The Constitution granted Congress the power "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Through statute, Congress can give greater and more stable definition to the threshold standard of standing. Having exercised such a power in the Administrative Procedures Act (1966), Congress can legitimately replace the loose "injury in fact" standard with a version of the more concrete "legal interest" standard.

Class actions

The legal device of a class action greatly emphasizes the "legislative" quality of the judicial process. Its purpose is judicial efficiency, to bring together separate parties with a common claim where

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"one or more sue or defend for the benefit of the whole." The point is to reduce multiple litigation, thus conserving judicial time and effort. Its effect is to present the Court with an opportunity to render judgments affecting whole classes of people. It is important, then, that what constitutes a class be carefully and clearly defined.

Through various reforms, the class action suit has become one of the most common devices by which the judiciary imposes its politics on the country. And, with a loosening of the standards of what constitutes a class, the result has been that the individual adverse litigant has faded a bit into the background. Broad decrees fashioned for broadly defined classes of people (for example, a particular race or gender) are in essence judicially created social policies.

In the beginning, the class action suit demanded that the class be clearly defined and the claim be concrete as well as common. Before the promulgation of the Rules of Civil Procedure in 1938, class action suits were guided by a strict *community of interest* (or joint rights) doctrine. That is, all members of the class had to stand in the *same* relationship to the opposing party and raise the *same* claim. For example, a well defined class with a community of interest would be all those who purchased an Oldsmobile only to discover that each automobile had been outfitted with a Chevrolet engine. Each individual claim is identical; each plaintiff stands in the same relationship to the defendant. By bringing all the plaintiffs together, an obvious multiplicity of suits can be avoided. Such a situation was the original object of the class action suit.

With the rise of legal realism, however, the concrete standard of a community of interest came to be viewed as hopelessly out of phase with the new more pragmatic, more empirical jurisprudence of the times. The Rules of Civil Procedure of 1938 loosened this strict community of interest standard so as to include suits where there are "several rights" and a "common question of law or fact affecting the several rights," in addition to suits involving the traditional "joint rights." As the *Harvard Law Review* reported in its survey of the development of class actions, this distinction between *joint* and *several* rights in the 1938 rules was "a source of confusion almost from its date of promulgation." The result was that in 1966 the original 1938 class action rule was amended, as the Supreme Court interpreted it, in order to replace "the old categories with a functional approach to class action."

Under this new "functional approach," Justice Fortas had occasion to explain, "the focus shifts from the abstract character of

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the right asserted to the explicit analysis of the suitability of the particular claim to the resolution in class action." What this actually means is that the concrete standard of a strict community of interest has been abandoned in favor of the more abstract standard of simply a "matter in controversy." The individual adverse litigants are not as important to sustaining the action as are the broader policy implications of the issue. The *Harvard Law Review* explained the rationale this way:

> First, to the extent that they open courts to claims not ordinarily litigated, class actions enable courts to expose policies underlying causes of action in circumstances where those policies might not otherwise be effectuated. Second, to the extent that they enable the courts to see the full implications of recognizing rights and remedies, class action procedures assist the courts in judging precisely what outcomes of litigation would best serve the policies underlying causes of action.

As in other procedural areas, and as is amply supported by both the original 1938 rule and its 1966 amendment, Congress has the legitimate authority to restructure the practices and procedures governing the class action suit in the federal courts. A return to the older, concrete standard of a strict community of interest and a movement away from the abstract functional approach is the place to begin. Further, by ending the present practice of allowing a class action suit to continue even after the named plaintiff's claim has been satisfied, Congress could guide the Court back to its primary purpose—the resolution of cases or controversies between particular adverse litigants—and away from what is, by any other name, social policy making. By establishing that mere race or gender or ethnic group is insufficient to satisfy a community of interest requirement, Congress can pull the judiciary out of the sociological mire and back on the firmer ground of protecting the rights of individuals.

Declaratory relief

A declaratory judgment is, in Henry Abraham's words, a "device that enables courts generally to enter a final judgment between litigants, *in an actual controversy,* defining their respective rights under a statute, contract, will, or other document, *without* attaching to the otherwise binding judgment any consequential or coercive relief." Declaratory relief, then, is a judgment *before* the intricacies of an actual lawsuit start up. Perhaps not surprisingly, the procedure has been available only since 1934. In 1933 the Su-

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preme Court hinted that such a procedure would, despite a 1928 Supreme Court opinion to the contrary, probably fit comfortably within the limits of the "case or controversy" requirement of Article III of the Constitution; in 1934, taking the hint to heart and wishing to make Court procedures more efficient, Congress passed the Declaratory Judgment Act; in 1937, true to its word, the Court upheld the Act. Writing for the Court, Chief Justice Stone held that "the operation of the Declaratory Judgment is procedural only" and conforms to the Constitution by still demanding an actual adversary dispute between real parties which is "manifestly susceptible of judicial determination. It calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present rights upon established facts."

The problem is that, despite the Court's confidence, the act has proved to be more than "procedural only," and such judgments do appear to fade into advisory opinions. In conjunction with the other procedural developments in areas of standing, class actions, and equitable relief, the Declaratory Judgment Act has led to the creation of new causes of action, and, as David Dickson has written, "changed both the substantive rights of parties and the jurisdiction of courts." (*Roe v. Wade*, the abortion case, was an action for declaratory relief.) The result of the Act has been to blur the boundaries of what constitutes an actual case or controversy.

One of the traditional standards for a case or controversy is the notion of "ripeness"; that is, the dispute must be neither hypothetical nor dead nor moot. The ripe controversy is one that is both clear and present; only then, it is agreed, can a court competently reach a *judgment* on the merits of the case, because only then will the legal issues be clearly exposed. By allowing a resolution of the conflict by declaratory judgment at an early stage of the dispute, before any concrete motions have begun to secure the claim in court, the Act serves to denigrate the idea of ripeness as a meaningful standard of a "case or controversy."

There is an additional threshold problem. By attempting to declare certain rights prior to the complete adversary process—a process including discovery, the underlying logic of which is to draw out all the facts and issues possible—a declaratory judgment is often based on arguments other than those that emanate from the facts of the case at hand. Hence, judgments are often declared more in accordance with the social and political predilections of the Court than in accordance with the established facts of the case. (In one case an ordinance banning obscene films was upheld *before* the

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details of the film in question were revealed.) Not unlike the new class action, the declaratory judgment is too often based more on the broader implications of the substantive policy issue than with the particular legal claims of the parties. Bolstered by the new, looser class action requirements, and the nearly non-existent standards for proving standing to sue, the Declaratory Judgment Act has greatly facilitated the rise of public interest litigation by private parties. The declaratory judgment has become a device whereby the Court may, in effect, convert political issues into legal ones.

The declaratory judgment has also proved to be much more than a simple declaration. Such a declaration implies enforcement because, as Chief Justice Marshall put it in *Marbury v. Madison*, where there is a right there must be a remedy. Thus, the declaratory judgment has come to be closely tied to equitable relief. Once the rights have been declared, the logic of the legal process demands more (as, for example, the reapportionment cases show). In the area of legislative districting, beginning with *Baker v. Carr* (1964), the Supreme Court "departed from the judicial task of applying the Constitution to invalidate existing districts, and assumed the political task of legislating new districts." The results, as Professor Dickson reports, were tragically predictable:

> In the reapportionment cases the Supreme Court, once embarked on requiring district court supervision of redistricting, was driven by the inexorable limits of judicial competence to simplify the issue to "one man, one vote" in all situations, regardless of interference with a coordinate branch of the government, the amount of litigation provoked, competing considerations, and the will of a majority of the people involved. The Court has felt compelled to give orders to a state legislature regarding the bills it might pass, and to strike down variations of less than four percent because the legislative solution departed from "the mathematical ideal."

This tendency of a judicial idea to expand itself to the limits of its logic (as Benjamin Cardozo put it) is hardly limited to the reapportionment area. It has characterized the areas of school desegregation, low-income housing, and the reform of prisons and mental health facilities. The result is that judges now find themselves administering social services on a more or less daily basis with more or less disastrous results.

Experience under the Declaratory Judgment Act suggests that it is time for Congress to reexamine the premises of the Act and to take a close look at how the Act has contributed to a much more politically active judiciary. Through statutory reform a good bit can

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be done to restrict the use of the declaratory judgment to those occasions when its use is demanded only by considerations of judicial efficiency.

Equitable relief

When the Rules of Civil Procedure of 1938 merged actions in law with actions in equity into one unified civil procedure, a traditional view that equity is a potentially dangerous source of unfettered judicial discretion was ignored.[1] Since Aristotle first articulated the idea of juridicial equity, and through its development in the later jurisprudential works of Coke, Hobbes, Blackstone, and Story, it was a generally accepted maxim that while equity was essential to any sound system of law, it was necessary that it be hemmed in by principles and bound down by precedent lest it degenerate into arbitrary discretion.

In the American Constitution, the judicial power was created so as to extend to all cases in law and equity. The failure of the Constitution to distinguish procedurally the two great spheres of law and equity did not go unnoticed. Keen-eyed Anti-Federalist critics of the Constitution such as *Brutus* and the *Federal Farmer*, wary of all the particulars of the Constitution anyway, immediately jumped on the problem posed by the blurred jurisdiction between law and equity. This power in equity, warned *Brutus*, would allow the judges to "explain the constitution according to the reasoning spirit of it, without being confined to the words or letter," thereby granting them the power to "mould the government into almost any shape they please."

The *Federal Farmer* was equally shrewd in his appraisal of the judiciary. In his view, his countrymen were "more in danger of sowing the seeds of arbitrary government in this department than in any other." The lack of precision in defining the limits of equity in the Constitution was a serious defect which would contribute to "an arbitrary power of discretion in the judges to decide as their conscience, their opinions, their caprice, or their politics might dictate." For if a judge should find that the "law restrain him, he is only to step into his shoes of equity, and give whatever judgment his reason or opinion may dictate."

[1] This section draws from my *Equity and the Constitution: The Supreme Court, Equitable Relief, and Public Policy* (Chicago: The University of Chicago Press, 1982). I am also generally indebted to William Kristol, *The American Judicial Power and the American Regime* (doctoral dissertation in political science, Harvard University, 1979).

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To defend the power of federal juridical equity against the Anti-Federalist attack, Alexander Hamilton, in *The Federalist*, insisted that the power was both essential and severely limited. The purpose of the power, he said, was to provide relief to those who suffered the consequences of "hard bargains." Such hard bargains were those dealings between individuals that might, for whatever reason, involve the elements of "*fraud, accident, trust,* or *hardship.*" In general, Hamilton argued, "the great and primary use of a court of equity is to give relief in *extraordinary cases,* which are *exceptions* to general rules."

In the Judiciary Act of 1789 and the subsequent Process Act, Congress (whose key committees contained some of the leading Anti-Federalist doubters) struck a balance between those who advocated a hard separation between law and equity and those who wished equity to be an unfettered judicial tool in every federal court. While the acts extended equity to all federal courts, they simultaneously established a rigid procedural separation between the two actions. The draftsmen of these bills saw the procedural distinction as necessary if equity was to be kept from becoming a dangerous source of unfettered judicial discretion.

By combining the procedures of law with procedures in equity, the Rules of 1938 in effect ignored the dangers which had always been at the core of the procedural arrangements of equity. The Rules of Civil Procedure of 1938 made it convenient for judges to switch from their shoes of law to their shoes of equity whenever they found the law too restrictive. In its effort to reduce equity to a safe and more certain code, the Rules opened the door for the power of equity to be exercised with a disregard for precedent or procedure.

In *Porter v. Warner* (1946), the Court seemed on the verge of giving equity a radical expansion by arguing that when the "public interest is involved in a proceeding" the equitable powers of the federal district courts "assume an even broader and more flexible character than when only a private controversy is at stake." But it was not until 1955 that it became clear just how fluid equity had become. The Court, in the second *Brown v. Board of Education of Topeka, Kansas* case, fashioned a new understanding of the Court's equitable remedial powers. The central thrust was that in place of an individual adverse litigant the Court placed an aggrieved social class. Its remedies would no longer be decreed for the individual who had been injured by the generality of the law, but rather for whole classes of people on the basis of a deprivation of rights—a

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deprivation that was provable only by resort to the uncertain turf of psychological knowledge and sociological inference. Further, the Court went beyond decreeing discriminatory laws unconstitutional and restricting their operation and attempted to fashion broad remedies for those so deprived.

What is particularly striking about Warren's invocation of the federal equity power in *Brown* (II) is that while he spoke of the "traditional attributes" and guiding "principles" of equity being controlling, he then ignored most of the more substantial equitable principles in writing his decree. The effect was to present the lower federal courts with a virtual blank check for restructuring American political and social institutions.

Since *Brown*, the Court has continued to expand and to confuse the public perception of its power of equity. The result has been to replace precedent and principle as the standards of both constitutional meaning and equitable relief with social science speculation. This new tradition of sociological equity has baffled even its defenders who have sought to define its scope. Chief Justice Burger thus was driven to conclude in *Swann v. Charlotte-Mecklenburg County Board of Education* (1971) (the school busing case) that "words are poor instruments to convey the sense of basic fairness inherent in equity. Substance, not semantics, must govern, and we have sought to suggest the nature and limitations without frustrating the appropriate scope of equity." The problem, of course, is that words are all we have. One must at least suspect that if the limits of any governmental power cannot be clearly and forcefully articulated, then there is something desperately wrong with our understanding of that power.

With this "triumph of equity," as Abram Chayes describes it, it is no wonder that the city of Parma, Ohio, now finds itself obligated by the desegregation decree of Judge Frank Battisti to advertise in minority publications in order to recruit more minorities to move within its borders. Nor is it surprising that the city of Boston, despite being fiscally strapped, is being pushed by decrees from Judge Arthur Garrity into abandoning its earlier budget cuts because it seems to Judge Garrity that such belt-tightening measures as increasing youth transit fares and charging youth groups for their use of public park facilities constitute "a very serious impeding of the court's desegregation orders." Through their equitable remedial powers the federal courts have come to exert ever greater control over the public till. (One should at least pause to reflect on the promise by the Federalists that the judiciary would be the institu-

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tion least dangerous to the political rights of the Constitution because it would neither wield the sword nor control the purse strings of the polity.)

If the Court cannot speak with confidence about the limits of the equity powers, it is the responsibility of Congress to do so. It is clearly within the constitutional prerogatives of Congress to sort out and give some definition and hence limitation to the equitable powers of the federal courts. Political deference to judicial self-restraint may indeed be a sound policy—as long as the judiciary can articulate some meaningful standards for the exercise of its powers. When it cannot, or will not, then it is time for the Congress to assume its constitutional obligations. That is what separation of powers is all about.

Congress can address the equity problem in a variety of ways. It could again separate the procedures in equity from the procedures in law. While this may be awkward and cumbersome, it would at least serve to remind the Court as well as the country that such procedural devices are frequently necessary to maintain the substantive integrity of a regime based upon the principle of the rule of law. Congress could also begin to refuse to grant equity jurisdiction as a part of many pieces of legislation. (The Fair Housing Act, for example, empowers the judiciary to enforce its provisions by injunctive relief.) There can also be a jurisdictional amount that sets a minimum of damages ($10,000, for example) before a federal court can exercise its equity jurisdiction. Congress could also place an *upper* jurisdictional limit on the amount of funds that can be ordered spent to fulfill an equitable decree. A limit, say, of $10,000 would certainly put something of a dent in most busing proposals. Or, more drastically, Congress can exempt certain cases from equitable relief, as it did with labor disputes in the Norris-LaGuardia Act. Whatever the tactic, the point is that in the area of equitable relief, as in the other procedural areas, Congress can do a good many things to return the judiciary to a more constitutionally faithful exercise of its intended powers.

A proscriptive or prescriptive judiciary?

In order to move in this direction, however, it is essential that we first sharpen our view of the problem of judicial activism by ridding ourselves of the apothegm that the Constitution is only what the judges say it is, that its words are "empty vessels into which nearly anything can be poured." We need to recover the older view

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that the Constitution has a meaning deeper and more permanent than the fluctuating opinions of the judges. In this light the Constitution is understood to embrace a theory of politics that serves as a standard against which the exercise of all powers of the government may be measured.

At the heart of the Constitution's theory of politics lies a fundamental truth about popular government: All power—judicial as well as legislative and executive—is of an encroaching nature. Left to themselves, all political men will go as far as they can in pursuit of their view of the political good, and the judiciary is subject to error of judgment no less than the other branches of the government. The judges were no more expected to be that "philosophical race of kings wished for by Plato" than any other officer. While the Framers of the Constitution suffered no delusion that the judiciary was in any way an apolitical institution, they were convinced that by institutional arrangements judges could be rendered less subject to the immediate and transient political pressures in the community and hence less partisan in their judgments. That the judges might on occasion presume to substitute their will for that of the people or of the legislature was not a possibility the Framers dismissed. Indeed, they sought to construct the judicial power within such an institutional context that the politically indispensable judicial functions could be safely and fairly administered and any judicial excesses could be trimmed.

The question of judicial activism must be addressed within the context of the doctrine of separation of powers. The idea of separating the powers of government in the Constitution had two objectives: to prevent tyranny by avoiding the unhealthy concentration of power in any one department, and to promote efficiency in the administration of the powers necessary to any government. Within this context the judiciary was to serve as a buffer against those ill humours that occasionally grip the population and can be translated into law. The judicial power was understood to be a necessary guard for the rights of individuals and minorities against the crushing political weight of what James Madison called "an interested and overbearing majority." Yet the judiciary was only one of several *auxiliary* precautions designed to check the inevitable tendency in popular governments toward legislative tyranny. In spite of all the contrivances, the regime was still considered to be, first and foremost, popular if not simply democratic. All of the institutional devices were meant to direct and tame popular opinion, not block it. The hope was that through institutional filters a *qual-*

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itative rather than merely a *quantitative* majority will would come to be expressed as law.

Constitutionally, the judiciary is, as Alexander Hamilton claimed in *The Federalist*, the branch "least dangerous to the political rights of the Constitution." But it is only the *least* dangerous (notice Hamilton did not foolishly suggest that it was simply not dangerous) if it exercises its legitimate function—judgment. Admittedly, the line between the exercise of the will and the exercise of the judgment is at best a blurred one. But what Hamilton had in mind is unambiguous. The function of the Court was to patrol the constitutional boundaries of the other branches (the legislature especially) and of the states and to keep them within their prescribed limits. The purpose of an independent judiciary was to insure that the limited and supreme Constitution remained so. As another leading Founder, James Wilson, put it, the courts were intended to be "noble guards" of the Constitution. Thus, the essence of the judicial power was originally understood to be *proscriptive*. Should the Court endeavor to take any "active resolution" it would be engaging in an illegitimate activity. Instead of being proscriptive and marking out the limits of the Constitution, the Court would be behaving in a *prescriptive* way and redefining the limits of the Constitution. Instead of being a bulwark of a limited Constitution, it would become the vanguard of an unlimited one.

Despite the dangers of legislative power, it was still considered by the Framers to be the cardinal principle of popular government. Basic to this principle is the belief that it is legitimate for the people through the instrumentality of law to adjust, check, or enhance certain institutions of the government whenever it is deemed necessary and proper. This includes the power of the legislature to exert some control over the structure and administration of the executive and judicial branches.

The qualified power of the legislature to tamper with the judiciary is not as grave a danger to the balance of the Constitution as the friends of judicial activism in every age attempt to make it. The Framers were not blind to the problem of making the judiciary too dependent upon "popularity." Even when a judicial decision runs counter to particular—and perhaps pervasive—political interests, the institutional arrangements of the Constitution are such as to slow down the popular outrage and give the people time for "more cool and sedate reflection." And given the distance between the people and legislation that such devices as representation (with its multiplicity of interests), bicameralism, and the executive

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veto afford, an immediate backlash to judicial behavior is unlikely. Experience demonstrates that any backlash at all is likely to be weak and ineffectual. But if the negative response is not merely transient but is widely and deeply felt, then the Constitution wisely provides well-defined mechanisms for a *deliberate* political reaction to what the people hold to be intolerable judicial excesses.

Principled limits to adjudication

If the history of court-curbing efforts in America teaches anything it is this: The American political system operates to the advantage of the judiciary. Presidential court-packing schemes are notoriously ineffective as a means of exerting political influence over the courts. Impeachment is properly too difficult to use as an everyday check against unpopular decisions. Not since John Marshall saw fit to defend his opinion in *McCulloch v. Maryland* (1819) in the public press has any justice or judge felt obliged to respond to public outrage over a decision. And it is very difficult—usually impossible—to build a coalition sturdy enough to pass court-curbing legislation.

Political responses to what are perceived to be excesses of judicial power take one of two forms. The response will either be a *policy* response (against a particular decision or line of decisions) or an *institutional* response (against the structure and powers of the courts). In either event, the response may either be *partisan* or *principled.* Usually a policy response will take the form of a constitutional amendment or a piece of legislation designed to overrule a decision. An institutional response will generally make an effort to make jurisdictional exceptions, to create special courts with specific jurisdiction, or to make adjustments regarding the personnel, policies, and procedures of the judicial branch.

Whatever the response, court-curbing is difficult for two reasons. First, no matter how badly a particular decision or line of decisions may gore your "ox," that same decision will undoubtedly have benefited a clientele at least as large and politically vociferous. While a majority in one of the houses of Congress may object to particular cases of "judicial impertinence" (as Representative Wilson viewed Justice Davis's controversial opinion in *Ex Parte Milligan* (1867)) there will certainly be a variety of objections that will issue in different views of what should be done. James Madison's "multiplicity of interest" theory works as well. The second reason court-curbing is not an easy business is that there is an underlying ap-

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preciation in American political thought for a properly independent judiciary. There seems to be a general consensus that tampering with judicial independence is a serious matter and the consequences of rash reprisals against the court as an institution may upset the original constitutional balance that has worked so well for so long. Underlying the occasional outbursts of angry public sentiment against the Court is that "moral force" of the community of which Tocqueville spoke. On the whole, the American people continue to view the judiciary as the "boast of the Constitution."

To be successful, any political attempt to adjust or limit the judicial power must be—and must be perceived to be—a principled rather than a merely partisan response. Only then will the issue of judicial activism be met on a ground high enough to transcend the more common—and generally fruitless—debates over judicial liberalism and judicial conservatism. The deepest issue is not whether a particular decision or even a particular court is too liberal for some and too conservative for others; the point is whether the courts are exercising their powers capably and legitimately. Together, the standards of *institutional capacity* and *constitutional legitimacy* are far more helpful in thinking about the nature and extent of judicial power than the ideological stamps of liberal and conservative. Keeping the courts constitutionally legitimate and institutionally capable benefits both the liberal and conservative elements in American politics.

Since the Constitution only creates judicial *power*, it is left to the more representative institutions to fashion the judicial *process*. In truth, the federal courts "live and move and have their being through the legislation of Congress." In the final analysis, judicial activism is not so much a case of judicial usurpation as it is of Congressional abdication. In light of this, Congress would do well to recover a bit of wisdom offered over half a century ago by Felix Frankfurter and James Landis: "The happy relation of States to Nation—constituting as it does our central political problem—is to no small extent dependent upon the wisdom with which the scope and limits of the federal courts are determined." Our current state of judicial activism is largely the result of Congress failing to exercise such wisdom.

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Aptitude vs. Achievement: should we replace the SAT?

CHRISTOPHER JENCKS & JAMES CROUSE

THE idea that colleges should choose among applicants on the basis of their "academic ability" appeals to both educators and the public. But "ability" has two distinct meanings, which imply different admissions policies. In one usage academic ability means an *existing* capacity to do academic work. In the other usage academic ability means a *potential* capacity to do such work. To say that an applicant "has the ability to do differential calculus," for example, can mean either that the applicant can already do differential calculus or that the applicant could learn differential calculus given opportunity and motivation. To avoid this ambiguity, psychometricians usually call the ability to learn something an "aptitude" while calling current mastery of a skill or body of knowledge "achievement."

When colleges say they want to select the "ablest" applicants, they almost always mean the applicants with the greatest academic "aptitude," not those with the highest current levels of academic

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"achievement." Yet so far as we know, the United States is the only major industrial nation in which colleges and universities use so-called "aptitude" tests to help them make admissions decisions. This does not mean that British, French, German, Japanese, or Soviet universities are indifferent to "aptitude" as we have defined it. On the contrary, educators in these countries appear to be just as interested in their students' ability to learn as are educators in the United States. Nonetheless, universities in other countries rely on what psychometricians call "achievement" rather than "aptitude" tests to help them make admissions decisions. They do this because they assume that the best single predictor of how much a student will learn in a university is how much he or she learned in secondary school.

American colleges and universities made the same assumption until well into the twentieth century. In the nineteenth century most American colleges were so eager to get more students that they admitted virtually anyone who applied. Only a handful of elite institutions—mostly private colleges in the Northeast—tried to screen out unpromising students. They did this primarily by relying on grades and letters from secondary schools with which they had ongoing relationships. Most of these secondary schools were also private, but some were academically oriented public schools—again mostly in the Northeast. A number of selective private colleges also gave their own admission tests, largely to determine whether students who did not come recommended by established secondary schools could do college-level work.

With the growth of public secondary education in the late nineteenth century, students from many more secondary schools began applying to selective colleges, and the burden on colleges of administering their own admission test increased. In 1900 a number of selective private colleges established the College Entrance Examination Board to give a single set of admission tests to applicants all over the country.

Like the exams they replaced, the new College Board exams measured mastery of the subjects that academically oriented secondary schools had traditionally taught: ancient and modern languages, history, mathematics, and science. But many of the new public high schools did not teach these subjects or offered less than four years of instruction in them. For applicants from such schools, poor performance on the College Board exams did not necessarily imply poor future performance in college. Such students would, it is true, usually have trouble in their first year, since they would not know certain things their professors assumed they knew. But if they sur-

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vived their first year or two, such students often did better than their College Board scores might have led the college to expect. Therefore, what the colleges wanted was a test that would identify the "diamonds in the rough" who could be expected to overcome poor preparation and learn a great deal if admitted. What they needed was a measure of academic "aptitude."

"Diamonds in the rough"

American colleges were not, of course, the only institutions that wanted to measure aptitude. Elementary and secondary schools also needed such a measure. Alfred Binet developed his original "intelligence" test to fill this need in France, and American variants of his test came into widespread use at the elementary and secondary level during the 1920's. The College Board administered its first "Scholastic Aptitude Test" (SAT) in 1926. While the Board described the new test as a measure of "aptitude" rather than "intelligence," most people used the two terms almost interchangeably at the time, and this is still true today. Both "aptitude" and "intelligence" were supposed to be stable traits that influenced behavior throughout life. In principle, of course, individuals' "aptitude" for higher education could depend on the quality of their secondary education. But, then as now, most people used the term "aptitude" as if it referred to a stable trait. By calling the SAT an "aptitude" test, its designers were encouraging users to assume that it was insensitive to the quality of an individual's previous schooling. They were also implicitly claiming that the SAT would predict college success more accurately than existing achievement tests. Had they not believed this, of course, they would not have developed or marketed the test in the first place.

To make the SAT insensitive to high school quality, its designers eschewed questions that obviously required skills or information taught only in "good" schools. Instead, they tried to measure skills that were taught either in all schools or in none. Virtually all elementary schools taught reading and arithmetic, for example, so the SAT included questions that tried to measure reading comprehension and arithmetic reasoning. Almost all secondary schools taught elementary algebra, so this also seemed a "fair" test of academic aptitude. And while good secondary schools tended to assign books that employ a larger vocabulary than the books assigned in mediocre schools, students from mediocre schools often acquired a large vocabulary from parents, friends, and extracurricular reading. The

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SAT therefore placed considerable emphasis on vocabulary and verbal fluency.

As time went on, colleges placed more emphasis on the SAT and less on the College Board's traditional achievement tests. Eventually, many colleges stopped requiring applicants to take the achievement tests. And when colleges that had previously relied entirely on high school grades for screening applicants began requiring applicants to take standardized tests as well (as many did in the 1960's and 1970's), they almost always required a test like the SAT, not achievement tests. The College Board still offers one-hour multiple-choice achievement tests in fourteen different subjects, but only one fifth of those who take the SAT take even one achievement test.

The Educational Testing Service (ETS) and the College Board have played a critical role in the shift from "achievement" to so-called "aptitude" tests. College admissions officers seldom have either the resources or the technical skills to make independent judgments about the merits of different kinds of tests. They rely on ETS and the College Board to do this for them. They emphasize the SAT because it purports to measure student "aptitude," which is what they want to determine. They believe—wrongly, as it turns out—that the SAT predicts future academic success more accurately than achievement tests can, and they think—again wrongly, as far as we can tell—that the quality of an applicant's secondary school preparation has less effect on SAT scores than on traditional achievement scores.

Until the 1960's, ETS also seems to have believed the SAT measured a stable underlying trait of the kind that the label "aptitude" implied. In 1959, for example, ETS published a booklet titled *You: Today and Tomorrow,* which was supposed to help ten-year-olds interpret their aptitude test scores. "In making their decisions," this text suggested, "the first questions that John, Andy, Betsy and Bill have to ask themselves are these: How much general scholastic ability have I? What special abilities have I?" The booklet then explained that, "Your scholastic ability is like an engine. It is the source of your power and speed in school: It tells you how fast and how far you *can* go." [1] Since ETS gave tests that purported to measure scholastic ability, it seems reasonable to suppose that ETS thought scores on these tests were, in fact, like horsepower ratings on an engine.

ETS does not make such claims today. A great deal of evidence

[1] M. R. Katz, *You: Today and Tomorrow* (Princeton: Cooperative Test Division, Educational Testing Service, 1959), pp. 14, 30.

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has now accumulated to indicate that scores on tests like the SAT in fact are not stable. Not only do scores change over time, but these changes grow larger as the interval between tests lengthens, suggesting that the trends are real. More important, scores on "aptitude" tests are no more stable than scores on conventional "achievement" tests.[2] The idea that "aptitude" tests measure stable traits better than "achievement" tests is therefore in disrepute among psychologists. Nonetheless, ETS and the College Board continue to call the SAT an "aptitude" test, which most people take to mean that it measures what they have always thought of as "aptitude," namely a stable trait.

The case for relabelling the SAT

Rex Jackson formulates ETS's rationale for calling the SAT an "aptitude" test as follows. The SAT, he says, "measures intellectual skills learned through both formal and informal educational experiences—skills that are exercised and further developed through application to school work in a wide variety of academic subjects and through experiences outside of school." Note that this formulation implies that school quality is likely to affect SAT scores. Nonetheless, Jackson offers two rationales for calling the SAT an "aptitude" test. First, "it is not tied to a particular course of study." Second, "it is designed to assist in predicting future academic performance."[3]

Jackson's claim that SAT scores do not depend on "a particular course of study" is hard to reconcile with his assertion that they depend on "educational experiences" unless the relevant educational experiences do not vary from one course of study to another. This seems unlikely. Knowing the meaning of particular vocabulary words, for example, depends largely on having seen these words in context and having either inferred or investigated their meaning. A course of study that involves reading books written for adults is therefore likely to result in higher SAT scores than a course of study that relies on textbooks purged of unfamiliar terms. As we shall see, there is as much school-to-school variation in vocabulary, reading comprehension, and arithmetic reasoning scores as in scores on conventional secondary school achievement tests.

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[2] See K. L. Alexander, M. Cook, and E. L. McDill, "Curriculum Tracking and Educational Stratification." *American Sociological Review*, 1978, *43* (1), 47-66, and M. Shaycoft, *The High School Years: Growth in Cognitive Skills* (Pittsburgh, Project Talent, 1967).

[3] R. Jackson, "The Scholastic Aptitude Test: A Response to Slack and Porter's Critical Appraisal." *Harvard Educational Review*, 1980, *50* (3), 382-391.

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Jackson's argument that the SAT is an "aptitude" test because colleges use it to predict future academic performance is even less persuasive. Colleges use the tests they give applicants for either admission or placement decisions. In either case, the tests are supposed to predict future performance. If this makes the SAT an "aptitude" test, it makes achievement tests in French and Physics "aptitude" tests, too. In one sense, of course, all these tests do measure aptitude. But if this is the only sense in which the SAT measures aptitude, the label is surely misleading.

If one defines "aptitude" as the capacity to master something, given opportunity and incentives, and "achievement" as having already mastered it, then almost every achievement test is also an aptitude test and almost every aptitude test is also an achievement test. If everyone taking an "achievement" test has had equal opportunities and incentives to master the material the test covers, those who interpret the test can assume that it measures "aptitude" as well as "achievement." But we cannot begin to approximate these egalitarian conditions within the schools. College applicants have never had either equal opportunities or equal incentives to master anything. A "pure" measure of aptitude for higher education is therefore unattainable.

So why do ETS and other testing organizations persist in claiming that certain tests measure "aptitude"? Why not just say that the SAT measures Vocabulary, Reading Comprehension, and Quantitative Reasoning? One possible answer is economic. Colleges *want* a measure of academic "aptitude" as distinct from "achievement." ETS is not in business to make money, but it must still worry about supporting its staff. If ETS were to give a Vocabulary test, a Reading Comprehension test, and a Basic Mathematics test, scores on these tests would probably seem less significant to some college admissions offices, and some colleges would stop requiring applicants to take the tests. Yet it is hard to believe this would happen on a large scale.

The main reason the SAT's label remains unchanged, despite all the changes in psychometric opinion about "aptitude" over the past generation, is probably institutional inertia. Why change the name of a product that is in such demand? Yet continuing to call the SAT a measure of "aptitude" involves significant risks. ETS is under increasing criticism from a variety of groups. Some of this criticism is mindless, but its pervasiveness means that ETS and other test designers must be extremely careful about maintaining their credibility among experts and test-users. Claiming more for one's prod-

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ucts than they can accomplish is a sure recipe for losing credibility and inviting legal restrictions on their use. The issue is not what ETS writes about the SAT in technical manuals or what ETS employees say about the SAT in academic journals. A test's name has more influence on how both educators and students interpret the results than technical manuals and scholarly articles can ever have. So long as ETS and the College Board call the SAT an "aptitude" test, people will assume it tries to measure aptitude in the traditional sense, and will be understandably angry if they find that it does not in fact do this.

How well does each predict?

Reporting SAT scores as Vocabulary, Reading Comprehension, and Basic Mathematics scores would not, of course, tell colleges whether to base their admission policies on these scores or on mastery of history, literature, physics, biology, and other secondary school subjects. In making this decision most colleges are not likely to see the issue quite the way outsiders might expect.

Many parents and students imagine, for example, that reputable colleges have far more applicants than places, and that colleges rely heavily on admission tests to choose among applicants. This is not the case. A third of all American colleges admit more than 90 percent of their applicants, two-thirds admit more than 75 percent, and nine-tenths admit more than 50 percent.[4] While most colleges admit most of their applicants, it does not follow that most students could attend most colleges if they just took the trouble to apply. Despite the fact that the number of students applying to most colleges barely exceeds the number the college wants to admit, different colleges admit very different students. The University of Chicago, for example, admits more than two-thirds of its undergraduate applicants, but it still ends up with one of the ablest freshman classes in the country. The reason is that high school seniors seldom apply to Chicago unless they have good grades and high SAT scores. This is partly because weak students do not think they will be admitted, and partly because they think that even if they were admitted they would have trouble with the academic work. The same kind of preselection takes place elsewhere. For many colleges, therefore, the primary function of admission testing is to help the college attract the applicants it wants, not to help it choose among those who apply.

[4] R. F. Hartnett and R. A. Feldmesser, "College Admissions Testing and the Myth of Selectivity" *AAHE Bulletin,* March, 1980, pp. 3-6.

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Furthermore, in choosing among those who apply, virtually all colleges weigh applicants' high school grades or rank-in-class more heavily than their SAT scores. This reflects the fact that high school grades usually predict college grades more accurately than SAT scores do—though both together predict better than either alone. Knowing this, a college that is trying to choose between alternative admission tests is seldom concerned with whether a given test would predict success accurately if it were used in isolation. Rather, colleges are concerned with how useful any given test would be as a supplement to high school grades.

In choosing among possible admission tests, colleges are likely to ask two questions: (1) Which tests predict future success most accurately? and (2) Which tests minimize the tendency of all admission tests to exclude applicants from mediocre secondary schools, low-income and poorly educated families, and non-white backgrounds? Neither ETS nor the College Board has made systematic comparisons between the SAT and traditional achievement tests using either of these two criteria. The evidence we have reviewed all points in the same direction, however. Whether one is interested in predicting freshman grades, college completion, or economic success after college, *achievement tests in traditional secondary school subjects predict later success at least as accurately as so-called aptitude tests do.* And whether one is concerned with equalizing opportunity for students from different ethnic groups, social classes, or secondary schools, *"aptitude" tests hurt the disadvantaged as much as achievement tests do.* We will take these issues up in turn.

Freshman grades. So far as we know, the College Board did not investigate whether the SAT predicted college grades more or less accurately than traditional achievement tests when it first introduced the SAT in the 1920's. Since then there have been a number of studies in specific colleges, but results differ from college to college; as far as we can discover, there has been no study covering a large representative sample of college applicants. The best data we have found is from a study ETS conducted in 1979 of 22 highly selective colleges and universities. Seventy-eight percent of the freshmen in these colleges had taken at least one achievement test. The data show that, on the average, SAT and achievement scores predict freshman grades equally well, though the pattern varies significantly from college to college. In most colleges, scores on ETS achievement tests are almost interchangeable with SAT scores. This suggests that colleges should choose between the two sorts of tests

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on grounds other than their ability to predict freshman grades. Colleges committed to predicting applicants' grades as accurately as possible, regardless of the cost to the applicants, should obviously require both sorts of tests. (We have not discovered any research on whether SAT scores or traditional achievement scores are better at predicting grades later in college.)

College Completion. So far as we know, ETS has not investigated whether its traditional achievement tests predict college completion better or worse than the SAT does, but one can get some relevant evidence from Project Talent. Talent surveyed a representative national sample of students who were in grades nine through twelve of a public or private secondary school in 1960, and followed them eleven years after their expected high school graduation (when they were around 29). We analyzed data on a representative subsample of those who had attended college.[5] To estimate college applicants' "aptitude" scores, we summed their scores on the Talent tests of Vocabulary, Reading Comprehension, and Arithmetic Reasoning. To estimate their overall "achievement" scores, we summed their standardized scores on the Talent tests covering English, History and Social Studies, Mathematics, and Natural Sciences.

The achievement composite predicted college completion better than the aptitude composite. This pattern recurs for respondents tested in ninth, tenth, and eleventh and twelfth grades. It also recurs when one predicts "years of higher education" rather than simply earning a B.A., and when one takes into account high school grades. These results suggests that, at least in the 1960's, selective colleges could probably have reduced their attrition rates slightly if they had substituted a battery of achievement tests for the SAT.

Economic Success. Although colleges usually claim that their admissions policies are designed primarily to identify applicants who will do good academic work, many are also concerned with selecting applicants who will eventually be able to support the college financially. This concern is especially strong among highly selective private colleges, where alumni contributions play a major economic role. So far as we know, ETS has not examined the relationship of its achievement tests to adult economic success. Our own work shows, however, that the Talent "aptitude" and "achievement" composites we have just described are equally good predictors of adult economic success. If this were true for ETS tests as well, colleges

[5] C. Jencks, J. Crouse, and P. Mueser, "The Wisconsin Model Reconsidered" Center for Urban Affairs and Policy Research, Northwestern University, 1981, offset.

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could substitute conventional achievement tests for the SAT without any loss of information about applicants' future economic prospects.

Disparities between schools and homes

Inequalities between schools. While the SAT was originally supposed to help colleges identify able students from mediocre secondary schools, we have not been able to discover any research on whether it does this more effectively than achievement tests do. If the SAT were less sensitive than traditional achievement tests to variations in secondary school quality, schools' average SAT scores should vary less relative to individual scores than schools' average achievement scores do. Indeed, if the SAT were truly insensitive to the quality of the school an individual had attended, schools' average SAT scores should not vary at all once we control for the characteristics of entering students.

While ETS has not investigated the sensitivity of the SAT to school quality, it has conducted research that bears on the issue. The 1965 Equality of Educational Opportunity Survey (EEOS) administered tests of Verbal Ability, Nonverbal Ability, Reading Comprehension, and Math Achievement to about 100,000 twelfth graders in more than 800 public high schools. ETS designed the EEOS tests of Verbal Ability and Reading Comprehension, and many of the items were similar to those in the verbal section of the SAT. ETS also designed the Math Achievement test, using items from the mathematical achievement tests in its STEP series. Since the EEOS did not collect data on changes in individuals' test performance between ninth and twelfth grade, it does not provide direct evidence regarding the relative impact of high school quality on these tests. It does, however, provide some indirect evidence. James Coleman reported that schools' average Math Achievement scores varied less relative to individual scores than schools' average Verbal Ability or average Reading Comprehension scores.[6] This suggests, though it certainly does not prove, that variations in the quality of public high schools have less impact on Math Achievement than on Verbal Ability and Reading Comprehension.

We can get somewhat more satisfactory evidence regarding the relative impact of school quality on different sorts of tests from the longitudinal testing program carried out by Project Talent. In 1963

[6] James S. Coleman, et al. *Equality of Educational Opportunity* (Washington, D.C.: U.S. Government Printing Office, 1966).

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Talent retested twelfth graders in more than 100 comprehensive public schools whom it had initially tested as ninth graders in 1960. After controlling ninth grade test scores, family background, and college plans, Jencks and Marsha Brown found that students who said they were in a college preparatory curriculum ended up with higher scores on Talent's twelfth grade test of Social Studies and History Information than otherwise comparable students who said they were not in a college preparatory curriculum.[7] Jencks and Brown made similar comparisons using Talent's tests of Vocabulary, Reading Comprehension, Arithmetic Reasoning, and Abstract Reasoning, all of which contain questions similar to the SAT. On these four tests, twelfth graders who had been in the college preparatory curriculum averaged only slightly above initially similar students who had been in some other curriculum. These results support Jackson's claim that so-called "aptitude" tests are less "tied to a particular course of study" than achievement tests are.

The fact that being in a college preparatory curriculum has less effect on "aptitude" than on "achievement" scores is not very important, however, since virtually all applicants to selective colleges have been in a college preparatory curriculum. From the colleges' viewpoint, the important question is whether school-to-school differences in the quality of college preparatory programs have more effect on "achievement" tests than on "aptitude" tests. Jencks and Brown found that after controlling the characteristics of entering ninth graders, schools' average score on the Social Studies and History Information test varied no more (relative to individual scores) than school's average Vocabulary, Reading Comprehension, Arithmetic Reasoning, and Abstract Reasoning scores. This does not suggest that conventional achievement tests are any more sensitive to variations in the quality of high schools than so-called "aptitude" tests are.

Both Coleman's findings and Jencks's and Brown's raise serious doubts about the College Board's traditional assumption that the SAT places applicants from secondary schools of varying quality on a more equal footing than achievement tests do. This assumption may have been correct half a century ago, when the SAT was instituted, and it may still be correct today if one compares the SAT to achievement tests in subjects that are only taught in a limited number of secondary schools. But so far as we can tell from the limited available evidence, it probably is not true for achievement tests

[7] C. Jencks and M. Brown, "The Effects of High Schools on Their Students." *Harvard Education Review,* 1975, *45,* 273-324.

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in subjects like mathematics and social studies that are taught, albeit in very diverse ways, in all secondary schools.

Inequality between families. So far as we can discover, ETS has not investigated whether race and socioeconomic background affect conventional achievement scores as strongly as they affect SAT scores. Barbara Heyns's work on summer learning suggests that both race and socioeconomic status (SES) have more impact on what students learn outside the classroom than inside it.[8] Thus, if the SAT were less tied to classroom learning than conventional achievement tests are, we would expect race and SES to have more impact on SAT scores than on conventional achievement scores. But as we have seen, the SAT may in fact be just as tied to classroom learning as conventional achievement tests are.

The ETS Academic Growth Study (AGS) surveyed ninth graders in 1965 and followed them up in eleventh and twelfth grades. The AGS gave ninth graders both "aptitude" and "achievement" tests, gave eleventh graders a battery of achievement tests, and gave twelfth graders either the SAT or PSAT. Data from this study made available to us by Karl Alexander of Johns Hopkins University indicate that father's education, father's occupation, mother's education, and race have roughly the same correlations with the two "aptitude" scores as with the two "achievement" scores. For those concerned with equality of opportunity, the choice between so-called "aptitude" tests and achievement tests is a toss-up.

Mastering the curriculum

The evidence we have just reviewed indicates that tests like the SAT do not measure what we normally mean by "aptitude" any better than conventional achievement tests do. SAT scores appear to be just as dependent on home environment and school quality as are scores on conventional achievement tests. And conventional achievement tests predict success in college and adult life just as well as the SAT or other "aptitude" tests do. Many at ETS conclude from this that, while the SAT is no better than conventional achievement tests, it is no worse either. We disagree. The reason is that emphasizing tests like the SAT in college admissions undermines efforts to improve secondary education.

Both college teachers and the general public have become increasingly concerned in recent years with the fact that freshmen

[8] B. L. Heyns, *Summer Learning and the Effects of Schooling* (New York: Academic Press, 1978).

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know less than they used to. The decline in average SAT scores is the most publicized symptom of this problem, but other testing programs have found the same trend. The problem is not that primary school children are not mastering the "three R's" as well as they used to; if anything, they are doing better. But teenagers are not moving as far beyond the "three R's" as they used to.[9]

Talking to high school students, teachers, and parents, one gets the strong impression that high school students do less academic work today than they did 20 years ago. Yet their nominal grades are higher than they were 20 years ago. This means that a clever student can earn A's without learning much. Such students know that if they earn A's in high school and do well on the SAT they will be able to get into a top college. And they assume—erroneously, in many cases—that because they got A's without doing much work, they must be "smart" and therefore likely to do well on the SAT. If they then do badly, they often blame the test rather than their school.

While we have no quantitative data on the number of hours secondary school students in different countries spend studying, most observers agree that American high school students do less academic work than their counterparts in Europe or Japan. Most observers also agree that one crucial reason—perhaps *the* crucial reason—European and Japanese teenagers work hard is that at the end of secondary school they must take achievement tests that largely determine whether and where they will be allowed to obtain higher education. We would not want to see American teenagers become as preoccupied with academic success and exams as Japanese teenagers are, but this is not a real danger. We *would* like to see American teenagers do more academic work than they now do. If selective colleges were to base admission on high school grades and tests that measured mastery of the secondary school curriculum, instead of basing it on grades and tests that measure vocabulary, reading comprehension, and basic mathematics, high school students who wanted to attend selective colleges might take their academic work somewhat more seriously.

Emphasizing mastery of the secondary school curriculum would have other benefits as well. First, it would help reinforce the traditional American notion that effort will be rewarded. Emphasizing the SAT, in contrast, reinforces the notion that working harder will not help much and that success depends on factors like "smarts" over

[9] C. Jencks, "What's Behind the Drop in Test Scores?" *Working Papers*, July/August 1979, pp. 29-41.

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which you have no control. As we have seen, this notion is probably mistaken, since the SAT is also an achievement test. But neither students nor teachers fully realize this. If we want high school students to believe work pays off, colleges must not only reward applicants who have worked hard but must do so in an obvious way.

Emphasizing tests that measure mastery of secondary school subjects would also encourage such schools to offer more demanding academic courses. One should not, of course, exaggerate the potential impact of college admission tests on high school curriculums. Only about half the nation's high school graduates attend college, and only a handful even apply to selective colleges where test scores play a major role in admission decisions. This minority does, however, influence the overall character of secondary education in a way disproportionate to its numbers. Those who attend selective colleges often come from influential families, and many educators judge their school's overall success by such students' accomplishments. Furthermore, while such students are not always social leaders in their schools, they typically exert more overall influence on their peers than their peers exert on them. Changes in college admissions policy that affect these students therefore tend to have ripple effects on schools as a whole.

The effect of substituting conventional achievement tests for the SAT would depend, of course, on how the new system worked. If all colleges were to require conventional achievement tests, more secondary schools would feel obliged to offer courses explicitly tailored to such tests. Those who oppose such exams usually point with horror to their consequences in France; those who favor them usually point to England, where national exams have produced more curricular uniformity than in America but far less than in France. Given the small proportion of American students applying to selective colleges, national exams would probably have even less impact here than in England. Furthermore, if our concern is with maintaining diversity, it would be easy to establish a set of achievement tests more flexible than those used in either France or England.

The College Board now offers achievement tests in fourteen subjects. If more colleges were concerned with measuring achievement, ETS could easily double or triple this number, even giving several types of exams in the more popular subjects. If the College Board allowed students to take as many exams as they wanted, while only reporting their highest scores, students could take a lot of unorthodox courses without jeopardizing their admissions prospects. Such a system would still reward "smarts," as the SAT does, but it would

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also require and reward sustained application in at least a few areas, which the present system does not.

Beyond distributive justice

Most discussions of college admissions policy focus on distributive justice. They ask whether the existing system admits the students somebody thinks selective colleges "ought" to admit. If we apply criteria of this kind, the choice between the SAT and conventional achievement tests appears, on present evidence, to be a toss-up. Both are equally helpful in identifying applicants who will earn above-average grades, who will finish college rather than drop out, and who will be more successful than average after they graduate. Both pose comparable obstacles to blacks, working-class whites, and applicants from second-rate high schools.

But we must also ask how college admissions policies affect the behavior of secondary school students, teachers, and administrators. Because this issue is harder to quantify, experts tend to ignore it. But in the long run it may be even more important than the questions of distributive justice about which experts worry most. A good college admissions system should encourage diligence rather than sloth, and seriousness rather than frivolity among secondary school students. The present system does not seem to do this. Selective colleges today base their admissions decisions largely on grades and SAT scores. Some high schools distribute grades in such a way as to promote diligence and seriousness, but many do not. Because of its content and its name, the SAT does not appear to reward diligence. Furthermore, by emphasizing skills that secondary schools do not explicitly teach, at least after tenth grade, the SAT implicitly tells secondary schools that most of what they teach does not really matter. It is always hard to defend a curriculum concerned with what Matthew Arnold called "the best that has been thought and said." Lacking external support, American secondary schools have largely stopped trying. Changing our college admissions system so as to reward those who learn the most in secondary school would not solve this problem, but it would probably help.

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The roots of the American public philosophy

WILLIAM A. SCHAMBRA

Is the New Deal public philosophy dead? Has a new public philosophy arisen to take its place since the 1980 election? We may not be able to answer these questions for many years, of course, but there is no denying that a major shift in the terms of political discourse has occurred in Washington, whether temporarily or permanently. We no longer ask ourselves *the* question that dominated domestic national politics for fifty years, through Democratic and Republican administrations alike: What major new programs should the federal government undertake in order to bring about a more equitable distribution of resources in America? Beneath this change, there seems to be a general disenchantment with the image of America as a great national community—a "Great Society"—bound together by a powerful central government. Instead, we ask ourselves today how we can shore up the "small societies"—state and local governments, and private associations—and how they can be brought to assume many of the burdens heretofore borne by the federal government. And today we ask ourselves how we may re-stimulate the production of resources in America, rather than how we may insure that resources are equally distributed.

Whether this shift of concerns turns out to be temporary or per-

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manent, we cannot understand the new terms of political discourse —or the old ones—until we understand the two American political traditions which they reflect.

Two traditions of American political thought grew out of a quarrel at the time of the Founding in 1787. The Federalists, led by Alexander Hamilton and James Madison, and the Anti-Federalists, including such people as Patrick Henry, Richard Henry Lee, Mercy Warren, and Melancton Smith, disagreed about how best to constitute popular government. Madison and Hamilton—principal authors of *The Federalist* essays defending the proposed Constitution—argued, contrary to centuries of political teaching, that an energetic national government was compatible with, indeed essential to, popular government. The national government described in *The Federalist* would have, for its "first object," the protection of the "diversity in the faculties of men, from which the rights of property originate."

Property and diversity were essential parts of the Federalist solution to the problem of popular government. Republics throughout history, the Federalists knew, had been torn asunder by the bitter struggle of political factions formed around opposing ideologies, or around extreme inequalities of wealth. The American republic would escape that fate; a citizenry interested, above all, in the acquisition of property or wealth would have little time for or patience with ideological disputation. And a modern commercial nation, organized for the acquisition of property and thus characterized by the division of labor, would be fragmented into such a diversity or "multiplicity of interests" that the great, fatal struggle of rich and poor would be averted. But commerce requires large markets, and large markets require "a great extent of territory"—sufficiently great that an energetic national government is necessary for its administration. The problem of fatal republican division, *The Federalist* argued, would not arise in the large commercial republic, administered by an energetic national government.

The Federalists understood that there was a certain unloveliness about the commercial republic. It relied upon and encouraged the vigorous pursuit of wealth—not always a pleasant spectacle. But "multiplying the means of gratification" and "promoting the introduction and circulation of the precious metals, those darling objects of human avarice and enterprise" was the only way to "vivify the channels of industry and . . . make them flow with greater activity and copiousness"; that is, it was the only way to promote the "prosperity of commerce" which had become the "primary object"

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of "all enlightened statesmen." National prosperity would only be assured if there were adequate economic incentives for the self-interested individual; Hamilton's *Report on Manufactures* was a blueprint for the creation of such incentives.

The Founders also realized that the pursuit of wealth would result in inequalities among men, given the "different and unequal faculties of acquiring property." But, as Hamilton argued, inequality followed inevitably from the freedom that the large commercial republic made possible: "an inequality would exist as long as liberty existed . . . it would inevitably result from that liberty itself." Inequality was a small price to pay for liberty, according to the Federalists.

This Federalist "package" of principles—an energetic national government administering a large territory, commerce, national diversity, individual self-interest, and inequality, all in the name of prosperity and liberty—forms one great tradition of American political thought. It is certainly the primary tradition, given the success of the Federalists in incorporating their principles into the Constitution. But it is by no means the only tradition of American political thought, as the late Herbert Storing reminded us. The Federalists were challenged at the time of the Founding by what came to be called Anti-Federalism. Professor Storing was the first to make clear that the Anti-Federalists were *for* something, and what they were for had a powerful appeal in 1787, and continued to have a powerful appeal throughout American history. The Founding did not settle everything, according to Storing: "it did not finish the task of making the American polity. The political life of the community continues to be a dialogue, in which the Anti-Federalist concerns and principles still play an important part." In fact, "the Anti-Federalists are entitled . . . to be counted among the Founding Fathers." [1]

The Anti-Federalists

The Anti-Federalists shared with the Federalists a commitment to popular government and liberty. This fundamental consensus made possible the Founding, and gave the ratification debates the air of a quarrel within the family, rather than of a civil war. But the Anti-Federalists dissented from the view that popular government or republicanism was possible in a vast extent of territory,

[1] Herbert J. Storing, *What the Anti-Federalists Were For* (Chicago: University of Chicago Press, 1981), p. 3.

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and under an energetic central government. The main reason for the Anti-Federalists' dissent was their belief, taken from Montesquieu, that republicanism was possible only with public-spirited or virtuous citizens. Republican citizens had to be imbued with the "love of the laws and of our country"; they must exhibit a "constant preference of public to private interest." Only an alert, public-spirited citizenry, they believed, would give that amount of attention to public affairs that self-government or republicanism truly requires.

This kind of virtue arose only in a genuine community, where citizens sensed their oneness with their fellows. Community, however, exacted a price: Human differences could not be permitted to flourish to such an extent that certain citizens considered themselves, or were considered by others, to be outside the community. Thus, the Anti-Federalists argued for a homogeneous citizenry: "in a republic, the manners, sentiments, and interests of the people should be similar. If this could not be the case, there will be a constant clashing of opinions . . ." They had in mind, as Storing argues, a homogeneity of a certain kind, "a society in which there are no extremes of wealth, influence, education, or anything else—the homogeneity of a moderate, simple, sturdy, and virtuous people." Diversity was to be suppressed on behalf of a general equality, because the Anti-Federalists saw, in the words of the "Federal Farmer," a connection between "the equal division of our lands" and the "strong and manly habits of our people."

It was not only necessary that wealth be roughly equally distributed, but also that there not be too much of it. Too much wealth tended to draw attention away from public things, and to corrupt republican morality. Thus, frugality or austerity was important for the Anti-Federalists, who agreed with John Adams that "frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues."

Finally—and we come to the specific point of dissent from the Federalists' large republic—all these rigorous conditions for community could be had only in a small republic. Here again, the Anti-Federalists claimed as their authority Montesquieu, who argued that "It is natural for a republic to have only a small territory," because in "an extensive republic, the public good is sacrificed to a thousand private views." In a small republic, the "interest of the public is more obvious, better understood, and more within the reach of every citizen"; thus, public affairs will command sustained public attention. That is the reason the Anti-Federalists championed

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a modified confederal form of government for the new nation, in which primary political responsibility was left to the "small republics" in the states.

To the Federalists' strong national government over an extensive territory, the Anti-Federalists preferred a weak national government, with primary political power left to the states. That was because the Anti-Federalists preferred a republic animated by civic virtue or public-spiritedness to one animated by commerce and individual self-interest; a republic resembling a homogeneous community to one characterized by diversity, or a multiplicity of interests; a republic that insured a general equality to one that tolerated the inequalities that spring from liberty; and a republic with an austere, frugal—what we would call "no-growth"—economy to one that encouraged prosperity, growth, and luxury.

It is impossible to survey the principles of Anti-Federalism without acknowledging their appeal, or sensing the power of their dissent from the Federalist position. And it would be regrettable if we, as a nation, had to accept one "package" of principles to the utter exclusion of the other. Fortunately, Americans are not faced by that unhappy choice. For the Federalists, while writing into the Constitution most of their principles and thus giving us the large commercial republic, did not have it all their own way in 1787.

Our coexistent traditions

The Anti-Federalists pressed hard at the Constitutional Convention for mitigation of the nationalist scheme of government proposed originally by Madison, Randolph, and others. The result of their efforts was what we call today (confusingly, in light of its Anti-Federalist source) federalism—the constitutional principle that important governing powers would be left to the states, and that certain parts of the national government, especially the Electoral College and the Senate, would acknowledge in their structure the states as states. As the late Martin Diamond argued so persuasively, American federalism sends a decentralizing impulse through the American system: "the formal federal elements . . . permanently commit American government to decentralization and generate the informal political processes and behavior which keep the commitment a reality." Our constitutional commitment to federalism insures that states and local governments survive, and that they continue to supply some of the goods valued by the Anti-Federalists. Largely as a result of Anti-Federalist efforts, we have a federalism that pre-

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serves and nourishes local community attachments, civic virtue, and public-spiritedness, as well as a large, commercial republic that secures prosperity and liberty.

No one understood better than Alexis de Tocqueville the complex coexistence of Federalist large republicanism and Anti-Federalist small republicanism in American life. According to Tocqueville, Americans had "forcibly reconciled" those "two theoretically irreconcilable systems." There was no name for the government that resulted; it was a kind of "incomplete national government," which combined "the various advantages of large and small size for nations."

America was so prosperous, Tocqueville understood, because it was a large, commercial republic; it had given "free scope to the unguided strength and common sense of individuals." There were dangers in the individualistic pursuit of wealth, however, since it is "always an effort" for commercial men "to tear themselves away from their private affairs and pay attention to those of the community; the natural inclination is to leave the only visible and permanent representative of collective interests, that is to say, the state, to look after them." That was, of course, the ideal condition for tyranny. Furthermore, commerce could be dehumanizing, since "love of comfort" introduces the individual to "petty aims, but the soul clings to them; it dwells on them every day . . . in the end they shut out the rest of the world and sometimes come between the soul and God."

Countering these tendencies, Tocqueville argued, were the American traditions of local self-government and private association—traditions kept alive by the decentralizing impulse of federalism. American law-givers had wisely given "each part of the land its own political life so that there would be an infinite number of occasions for the citizens to act together and so that every day they should feel they depended on one another." Private voluntary associations of all kinds similarly served to draw men upward from mere self-interest into public life, combating the dehumanizing effects of individualism. Citizens acting together and depending on one another come to form a genuine community; a certain public-spiritedness or civic virtue is generated by local self-government, and men come to love their "little republic." Such public-spirited citizens, Tocqueville noted, will not be likely to surrender control of public life to the state.

For Tocqueville, then, the "forceable reconciliation" of "two theoretically irreconcilable systems" was absolutely central to the sur-

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vival of American liberty. When he inquired into the "main causes tending to maintain a democratic republic in the United States," the first cause was "the federal form . . . which allows the Union to enjoy the power of a great republic and the security of a small one." The two systems or principles would always be in tension, according to Tocqueville, each threatening to consume the other. For instance, in Tocqueville's time, the states were powerful enough to challenge the existence of the union. The real danger, however, lay in the future, when a centralized national government would threaten to swallow up the local institutions so important for liberty.

The greatest political crisis of our history—the Civil War—was precipitated precisely by the need to restore the balance between the two principles. Abraham Lincoln had to remind Americans that the principle of local government could not be radicalized into "squatter sovereignty"—that there was a certain moral minimum (in this case, the equality espoused in the Declaration of Independence) to which we were committed as a nation. With this great exception, however, the tension between Federalism and Anti-Federalism was a healthy and invigorating one throughout our first century and a half, one counterbalancing and modifying the other. We prospered as a great commercial nation, and, at the same time, civic virtue and public-spiritedness thrived in our state and local governments and private associations.

The New Deal synthesis

The central claim of modern liberalism—or at least of that strain that runs from Theodore Roosevelt's "New Nationalism" to Franklin D. Roosevelt's "New Deal"—is that it could resolve the tension between these two principles, collapsing them into one coherent doctrine and giving us the best of each. That is, liberalism promises to create the sense of community thought possible by the Anti-Federalists only in the small republic, on a national scale, through the energetic government established by the Federalists.

Essential to the creation of the "Great Community" (John Dewey's description of the liberal goal) is the reduction, by a powerful central government, of those community-disrupting inequalities that spring from modern industrialism. According to Theodore Roosevelt, "The people . . . have but one instrument which they can efficiently use against the colossal combinations of business—and that instrument is the government of the United States." Modern liberalism, in Herbert Croly's famous formulation, would fulfill the

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"promise of American life" by marrying Jeffersonian democracy—characterized by the "good fellowship" that comes from "life in a self-governing community"—to Hamiltonian nationalism. This promise to combine into one coherent whole what had theretofore been considered rival political traditions would give the New Deal public philosophy an overwhelming moral and political appeal.

A comprehensive account of the liberal idea would have to begin with the appearance of Croly's *The Promise of American Life* in 1909, where the marriage of principles was first described, and continue through Theodore Roosevelt's presidential campaign of 1912, when this new brand of liberalism was injected into American political life, to Franklin Roosevelt's "New Deal," the apotheosis of modern liberalism. Here, however, we will consider primarily the mature form of liberalism, the New Deal public philosophy.

The New Deal public philosophy, according to Samuel Beer, had two characteristic elements: centralization and egalitarianism. Centralization meant that the national government—as opposed to the state governments that traditionally had been central to Democratic Party doctrine—would now do what needed to be done to meet the crisis of the Great Depression. This was far more than a doctrine of administrative centralization; in fact FDR hoped to create a true sense of national community—characterized by public-spiritedness, discipline, and self-sacrifice—in the face of national problems. In his first Inaugural Address, Roosevelt urged us to "move as a trained and loyal army willing to sacrifice for the goal of a common discipline . . ." We had to be prepared to "submit our lives and property to such discipline," and to exhibit "a unity of duty hitherto evoked only in time of armed strife."

Essential to the task of creating national unity, according to FDR, was the amelioration of extreme inequalities of wealth or power that make community difficult—as the Anti-Federalists had noted a century and a half before. Hence, the second theme of the New Deal: egalitarianism. Some of FDR's programs, such as the social security system, involved a mild degree of wealth redistribution. Other measures, such as the National Labor Relations Act of 1935, served to reduce differences in power and influence between the corporations and unions.

An energetic central government, fostering equality by reducing disparities of wealth and power, and cultivating in the people a certain public-spirited devotion to the general good, would, in Beer's words, further the "process of national integration" in which "the community . . . is made more of a community." That was the liberal

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promise: the creation of the small republic within the large republic, the marriage of Federalism and Anti-Federalism.

Community vs. commerce

It would be more accurate, of course, to describe the promise of liberalism as the marriage of the *best* in Federalism with the *best* in Anti-Federalism. Like all proposed marriages of principles in which only the best elements of each are retained and the worst of each dropped, this proposed marriage was utopian.

Modern liberalism promised community—but now *without* the state, local, and private institutions that the Anti-Federalists had considered the very source of community. Liberals were, in fact, hostile to local institutions, as such institutions were notoriously backward and provincial. As Arthur Schlesinger, Jr. put it recently, "local government historically has been the . . . last refuge of reaction." It was no longer necessary to pay the price of provincialism for community, however; liberalism's "great community" would be drawn together by a powerful, progressive national government, and especially by a powerful, progressive President, using his office as a "bully pulpit" to preach selfless devotion to the common national good.

Liberalism also promised to sustain the material abundance of the commercial republic—but this time *without* the unattractive self-interested individualism and inequality that the Federalists had considered the source of abundance. Those unsavory features of commerce would gradually be supplanted by community and public-spiritedness, apparently without harming commerce itself. In short, liberals promised prosperity, while harboring suppressed hostilities toward the traditional sources of prosperity. Liberals assumed that abundance was here to stay and that we could now get on with the task of assuring a more equitable distribution of abundance in the name of community.

Theodore Roosevelt therefore was able to argue that "the most pressing problems that confront the present century are not concerned with the material production of wealth, but with its distribution." The business world could now "change from a competitive to a co-operative basis," transcending the pure free enterprise system, in which citizens are "trodden down in the ferocious scrambling rush of unregulated and purely individualistic industrialism." FDR similarly believed the depression had shown that "heedless self-interest" was "bad economics" as well as "bad morals," and that

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"the greatest change we have witnessed has been the change in the moral climate in America." Roosevelt rejoiced that "our country has been knit together in a closer fellowship of mutual interest and common purpose," that "more and more of our people . . . seek the greater good of the greater number," and that the "selfish purpose of personal gain, at our neighbor's loss, less strongly asserts itself."

The utopianism implicit in the prospect of a great national community, which would combine sustained prosperity with widespread and increasing equality, became apparent in the 1960's and 1970's. In particular, equality became the consuming passion of liberalism, and, embodied in a growing central government, began to cut deeply into liberty and prosperity. Liberalism less and less successfully suppressed its hostility toward the necessary preconditions of growth. Anti-Federalist community began to devour Federalist commerce.

The growing liberal devotion to equality manifested itself primarily, of course, in a concern over the proper distribution of wealth. That concern had begun modestly enough as the desire to provide a floor for the least fortunate, and thereby bring them into the national community. The desire to provide a floor, however, swelled into a passion to eliminate all distinctions in the distribution of wealth—the assumption being that property was not private, but at the disposal of the community. Christopher Jencks would argue that "we need to establish the idea that the Federal government is responsible not only for the total amount of the national income, but for its distribution," and that we would have to "alter people's basic assumptions about the extent to which they are responsible for their neighbors and their neighbors for them." The assumption in John Rawls's *A Theory of Justice* was that everything—including an individual's talents and abilities—belonged to the community. The notion that the community was now responsible for the proper distribution of wealth was reflected in the proliferation of federal social welfare programs in the 1960's and 1970's, and in the national tax structure, which came to be seen as a device for income transfer as much as for collection of revenues.

As the community demanded a more equitable distribution of wealth, it also demanded tighter government supervision of the economy in general. In the "ferocious scrambling rush" of commerce, the public good all too often was sacrificed to a variety of private goods. The national government had to remedy this imbalance—and so, throughout the 1960's and 1970's, it became deeply involved in the regulation of commerce on behalf of "community values" like

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public safety and clean air and water. All these redistributive and regulatory projects, of course, meant bigger and bigger government. The second principle of the New Deal—centralization—assumed proportions unanticipated by liberalism's founders.

The single-minded pursuit of community and equality through heavy taxes, massive regulation, and social engineering recently began to take a toll on national economic performance. It became increasingly apparent that Anti-Federalist community and equality, and Federalist commercial prosperity, were *not* so easily reconciled. This, of course, was something that the Anti-Federalists had seen long ago, when they had argued that a simple economy, frugality, and austerity were the only routes to community. It is not surprising, then, that this Anti-Federalist idea found an echo in liberal pronouncements as the economy slowed down in the late 1970's. Liberals no longer even tried to suppress their hostility toward the preconditions of commerce. The very principles of prosperity and growth were questioned, and the virtues of austerity, frugality, and a no-growth economy endorsed. Even President Carter would say in his Inaugural Address that "we have learned that *more* is not necessarily *better*."

The problem would have been seen clearly by Tocqueville. In his eyes, the American experiment was successful because we had kept the two great American traditions apart, each in its appropriate sphere, yet in a healthy tension. The effort to marry the principles, however, had joined centralization (now free of its vital counterweight of local government) to equality (now lacking its vital counterweight of individual liberty). Relieved of their ballasts, equality and centralization had moved toward their logical conclusions and became radicalized. The result was a doctrine that drove us toward "a great nation in which every citizen resembles one set type and is controlled by one single power."

Restoring the "essential tension"

If, in fact, the New Deal public philosophy is dead or dying, it is because the utopian character of the marriage of Federalism and Anti-Federalism has become clear, on a practical level, to the American people. They simply are not prepared to pay the price of a redistributive tax structure, massive welfare programs, a powerful and intrusive central government, and a no-growth economy, in order to achieve the liberal vision of the great national community.

Any public philosophy that would replace the New Deal, how-

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ever, must return for its elements to the two American political traditions, for they both express immutable yearnings in the American soul. Neither tradition may be ignored. Contemporary conservatism (or, at any rate, libertarianism) and contemporary radical liberalism fail to understand this. Each of these strains of political thought does avoid the utopian excess of collapsing together the two political traditions. Each, however, commits the equally utopian excess of radicalizing one tradition at the expense of the other. Thus libertarianism (and its 19th century precursor, laissez-faire capitalism) makes the error of radicalizing the liberty, self-interest, and commerce of the Federalist tradition, while ignoring the equally legitimate impulse toward community and public-spiritedness. Conversely, the contemporary left embraces only the Anti-Federalist principles of community and equality—and, in some of its more exotic manifestations, even the Anti-Federalist "small sphere"—while despising the principles of self-interest and commerce.

America will be returned to political health only if we avoid these utopian errors and restore the Tocquevillian condition in America. Both traditions must be resurrected and restored to their appropriate spheres. They will then function as they functioned prior to the New Deal: together, yet in tension, one correcting and moderating the excesses that follow from the other.

The new terms of political discourse in Washington suggest an awareness of this need to restore the Tocquevillian condition. We seem to have rediscovered the Federalist idea that one of government's primary concerns is the provision of incentives for individual economic enterprise. Restoring the "prosperity of commerce" through the stimulation of individual self-interest has once again become the "primary object" of our statesmen, at least momentarily. Nor does this concern with reviving the economy signify an abandonment of the principle of community. Rather, we now look again —with the Anti-Federalists and Tocqueville—to state and local government and private associations to satisfy the American yearning for community. The new terms of political discourse indicate a sort of instinctive return to the healthy separateness and tension of the two American political traditions.

Whether these new terms of political discourse become the *permanent* terms remains to be seen. The supreme test will be whether a comprehensive, politically persuasive alternative to the utopian vision of the New Deal can be formed from the two American political traditions. To that end, this administration must make explicit what is already implicit in its programs of supply-side

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economics on the one hand, and the "new federalism" and private sector initiatives on the other.

This is by no means assured, of course, for the utopian vision of the great national community continues to have tremendous appeal in America. From the vantage of modern liberalism, supply-side economics appears to be simply a return to unrestrained individualism and mean-spirited self-aggrandizement. This economic program, by "taking from the poor and giving to the rich," can only compound the inequalities that liberalism has painstakingly ameliorated over the past five decades. Supply-side economics is, in short, a profound repudiation of the principle of community. The same may be said of the new concern with local and private institutions. Local and private communities are anachronistic, parochial "refuges of reaction"—mere mockeries of the great, progressive national community that, in liberalism's view, is the proper goal for America. In its struggle for survival, modern liberalism promises to take full advantage of the moral high ground that comes with the defense of the principle of community.

Contemporary American politics will be characterized for some time to come by the struggle between an as yet vaguely formulated Tocquevillian view of America, and a well formulated but politically exhausted liberal utopian view. However this contest is decided, it cannot be understood until we first understand its theoretical components—the two great traditions of American political thought.

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Are we losing our farmland?

JULIAN L. SIMON

THE scare stories in the newspapers and on television about the loss of cropland to urbanization in the United States are statistically unsound, yet the misinformation contained in them has already had destructive effects on individuals and upon the economy. Bernard J. Frieden, in the Spring 1979 issue of *The Public Interest*, discussed the impact on people who want to build and buy new homes. But there are also ill effects on industrial development, on farm planning, and on the incentive to farm—all the outcomes of restrictions on economic mobility in the name of "saving prime farmland."

The source of many or most of these news stories was the National Agricultural Lands Study (NALS), whose booklet—distributed across the country and given away in lots of 5,000 and 10,000 to a variety of organizations—was titled, "Where Have the Farmlands Gone?" Secretary of Agriculture John Block is on record as agreeing with this product of the Carter administration, saying that the loss of agricultural land is "a crisis in the making," similar to the energy situation ten years ago. NALS "has built a strong case for protecting good agricultural land," he says.

The issue is clearcut: Should we be concerned about the amount of U.S. farmland, and of cropland in particular, that is currently being converted for urban uses? I emphasize that this is the all-important question, because it is easy to forget just what it is we

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are interested in amid all the confusing arguments, counter-arguments, and numbers.

The answer to the central question must depend on *how much* of our cropland, present and potential, is currently being transformed for urban uses. I suggest that the likely amount is only about *one-third* of the amount claimed by NALS in its national campaign to arouse concern about the issue, a rate probably no greater but rather less than in the past, and certainly not three times the rate of the recent past as claimed by NALS. This true rate is not likely to worry those knowledgeable about agriculture.

What *is* farmland?

To avoid grave confusion, some terms must be defined. "Farmland" or "agricultural land" usually includes cropland, pastureland, forest land, and land in other agricultural uses. "Cropland" means land on which field crops such as corn and wheat are usually grown. The statistical and economic differences between "farmland" and "cropland" are enormous, and have led to gross confusion. For example, a recent estimate of conversions of pastureland and forestland to other uses (including "wetlands") has been almost 3 million acres, even though absolutely no one seriously claims that the amount of cropland being converted annually is greater than two-thirds of a million acres. "Harvested cropland" for a given year excludes cropland left fallow that year. "Prime farmland," as the term is used by the Soil Conservation Service (SCS), is most peculiar: It includes some land that is now covered with water and some that has never been used for agriculture, and it also refers to potential cropland as well as land currently used for crops. (This is quite different from common usage, and would make most farmers laugh. For example, in the farm advertising section of *The Wall Street Journal*, "prime" invariably refers to land that is now highly productive of crops.)

Another important likely source of confusion lies in the NALS's extraordinary definition of "agricultural land." It includes all nonfederal land not in "nonagricultural" uses such as rural transportation rights-of-way and water impoundments. That is, their definition of agricultural land includes all waste land, such as deserts, swamps, and mountain ranges.[1] The possible mixups caused by this definition need not be spelled out.

[1] Michael F. Brewer and Robert F. Boxley, "Agricultural Land: Adequacy of Acres, Concepts, and Information," paper delivered to AAEA, June 27, 1981, p. 3.

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Our ultimate concerns

The farmland-preservation campaigners suggest that we are riding negative trends, that bad things have happened and are happening to us because of the conversion of land to built-up uses. For example, Cecil D. Andrus, former Secretary of the Interior and now a speaker for the American Farmland Trust, said in a talk called "Pave now, pay later": "The federal government itself has been one of the worst land-abusers in the nation; every mile of interstate highway, for example, consumed 48 acres of land . . ." But consider this: The number of acres of land covered by rural highways actually *went down* from 1969 to 1977—according to NALS data![2] This apparent absurdity is the result of a small amount of roadway changing from the rural to urban category, and should be ignored, but it does make clear that there is no substantial *increase* in rural highways. And if we look at the more inclusive category of *all* roads and streets, rural and municipal, the U.S. totals for 1950, 1960, 1970, and 1978 were 3,313; 3,546; 3,730; and 3,885 thousand miles respectively.[3] In light of those data, there is no conceivable way that anyone can find a credible threat to farmland due to road building.

Now let us go to broader issues. We must first examine a few long-term trends to see if we really have been moving in a negative direction, focusing on what *ultimately* concerns us—quantities and prices of food, trees, housing, and so on. We must remember that farmland by itself is only an instrument to provide food and fiber rather than being of intrinsic value, except to those who love it for its own sake.

The quantity of food. U.S. food production has been going up by leaps and bounds. To avoid trying to add apples and oranges, which can only be done by summing their money value, let us look at one representative and very important crop—corn. Figure I shows that total corn production has been rising rapidly in recent decades. This means more to be consumed by Americans as vegetable and meat, and more to sell abroad. No grounds for concern there.

The price of food. We are said by prominent worriers to be on a rising price trend. Figure II shows the long run price of food, in this case wheat, measured in the hours of labor that a given quan-

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[2] David L. Brown and Calvin L. Beale, "The Sociodemographic Context of Land Use in Non-Metropolitan America in the 1970's," Technical paper VI prepared for the National Agricultural Land Study, January 1981.

[3] *Statistical Abstract of the United States* (Washington, D.C.: U.S. Dept of Commerce, 1980), p. 641. For perspective: (a) In all, transportation use accounts for 1.14 percent of all U.S. land, 26 million of 2,264 million acres; (b) 18 percent of the total mileage in 1979 was municipal, and the rest rural.

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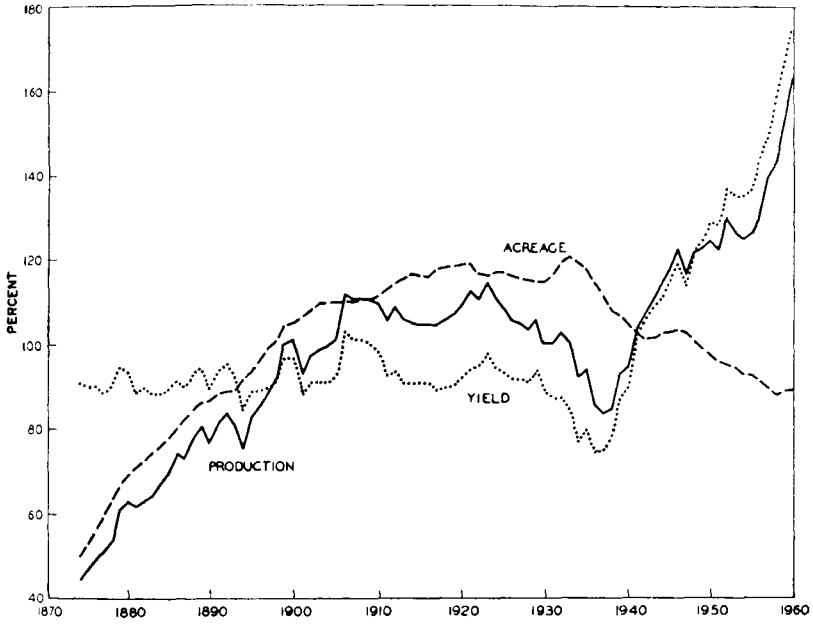
FIGURE I. *U.S. Acreage, Yield, and Production of Corn, 1870-1960**



* Source: James O. Bray and Patricia Watkins, "Corn Production in the United States, 1870-1960," *Journal of Farm Economics* 46 (1964): 753.

tity of food costs. With each successive year less and less work has been required to buy a bushel of wheat. This means that a smaller proportion of our income has been needed to buy farm output with each passing year. And even compared to other products, as measured by the Consumer Price Index, the price of food has not been going up and probably has gone downwards. Those trends look cheering rather than distressing.[4]

Trees. We must consider whether increased food production is at the expense of other important goods and services. Trees are a possible competitor, both for recreation and for wood. Table I shows that the amount of wood being grown has been on the rise rather than on the decline in recent years; the forest acreage has about stabilized. Lumber prices have risen as we have made the transition to commercial tree-growing from cutting wood for farmland; this upward trend therefore need not continue in the long-run future.

Recreation land. Land devoted to recreational uses has been in-

[4] Since 1970 the price of food has risen relative to the CPI, due in part to rises in the prices of energy and fertilizer. Both of the latter reflect increases in the price of oil since 1973. If these relative prices continue to rise, the price of food might well continue to rise. But the long-run trends in energy and fertilizer prices are downward, and hence I see no reason to believe that these trends in food prices will not resume their long-run courses.

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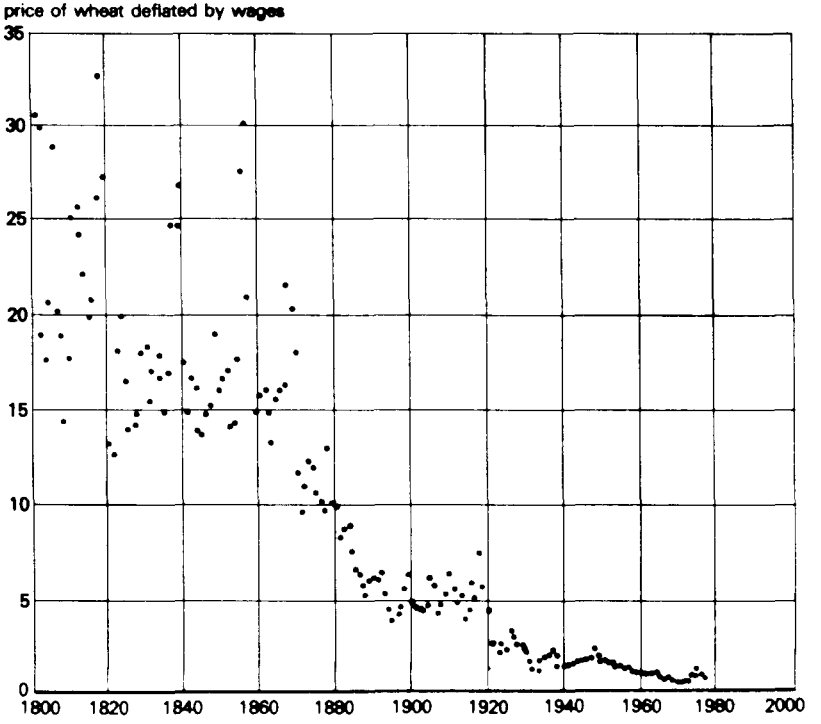
FIGURE II. *The Price of Wheat Relative to Wages in the U.S.**



* Source: U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics of the United States: Colonial Times to 1970* (Washington: GPO, 1976).

creasing, and visits to recreation areas have been growing by leaps and bounds.[5]

Wetlands. Perhaps most amazing is that even the amount of "wetlands"—what used to be called swamp and marsh—is increasing even though enviromentalists have been lamenting its decline. That is, new wetlands are being created faster than the old ones are being drained. About 7 million new acres of wetlands were created between 1967 and 1975. And the Soil Conservation Service says that "there is strong evidence that the total acreage of water and associated wetlands will increase rather than decrease in the future." [6]

[5] Hans Landsberg, *Natural Resources for U.S. Growth: A Look Ahead to the Year 2000* (Baltimore: Johns Hopkins, 1964) p. 171; *Statistical Abstract of the United States,* 1973 (p. 202) and 1980 (p. 242); *Information Relative to the National Park System* (Washington, D.C.: U.S. Dept. of Interior, June 30, 1944) p. 35; John Baden, ed., *Earth Day Reconsidered* (Washington, D.C.: Heritage Foundation, 1980) p. 16.

[6] Raymond I. Dideriksen, Allen R. Hidlebaugh, and Keith O. Schmude, *Potential Cropland Study,* Statistical Bulletin No. 578 (Washington: USDA, Soil Conservation Service, October, 1977) p. 4.

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TABLE I. *Net Annual Growth of Sawtimber and Growing Stock on Commercial Timberland, by Region*[1]

REGION	1952	1962	1970
North	4.1	4.9	5.5
South	6.3	7.5	8.6
Rocky Mountain	1.2	1.3	1.4
Pacific Coast	2.3	2.7	3.1
Total	13.9	16.4	18.6

1 Source: *Perspectives on Prime Lands,* U.S. Department of Agriculture. Background papers for Seminar on the Retention of Prime Lands July 16-17, 1975, sponsored by the USDA Committee on Land Use, p. 21. Originally from U.S. Department of Agriculture, Forest Service 1973, *The Outlook for Timber in the United States,* For Res. Rpt. No. 20. Data for 1952 and 1962 differ from data published in earlier reports because of adjustments based on newer information from remeasured Forest Survey Plots. Data for all years are "trend level" estimates. Data may not add to totals because of rounding.

Cropland and farm productivity

Cropland. Now the astonishing trend in cropland: For some crops such as corn, the trend has been somewhat downwards, as seen in Figure I. By now this trend may be understood as not worrisome, but largely a response to increased yield and to the demand for other valuable crops, rather than "encroachment" by cities. Land in field crops taken altogether clearly has been increasing rather than decreasing. One source of data is the Censuses of Agriculture for 1969, 1974, and 1978. Harvested cropland rose from 1969 to 1974, and then from 1974 to 1978. An even more reliable source of such data is the Crop Reporting Board. After a drop, harvested cropland rose from just over 290 million acres between the mid-1960's and the early-1970's, to around 340 million acres near the end of the 1970's, according to the CRB.[7]

These data show, as conclusively as such data can ever show anything, that the Soil Conservation Service's claims about decreases in cropland are unfounded. Based only on their 1967 and 1975 surveys—the main source of data for all the recent stories in the media—they say that between 1967 and 1975, "Cropland declined from 431 million to 400 million acres." And if the SCS and NALS are so wrong about this key number, there is reason to be sceptical of their other assertions.

It may well be true that we would have even more trees and parks and wetlands if farmland did not compete with them. But to say so is simply to recognize that now, as always, we live in a

7 *Statistical Abstract of the United States,* 1979, p. 708.

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world of scarcities, which is not news. What *is* news is that, with respect to all these farmland-related goods and services, our situation has been getting better rather than worse, less scarcity rather than more. This set of trends may well seem paradoxical. We often think of ours as a zero-sum world: It seems to us that having more of one thing must mean less of others. Instead, we have been getting more of *all* the good things.

The mechanism enabling all these good things to happen at once —together with the increase in cropland, which we shall consider next—is increased farm productivity. We can see the startling recent productivity gains in Figure I. Please note that this increased productivity is relatively recent, starting in the late 1930's.

One may wonder whether some sort of subtle exploitation of our existing capital is going on, enabling us to have all these good things at once. One candidate might be agricultural land quality. Are we doing all this at the expense of destroying prime land and lowering the quality of agricultural land? In fact, the quality of the cropland in use has been going up year by year. To quote the Soil Conservation Service:

> The quality of cropland has been improved by shifts in land use. In 1975, 86 percent (344 million acres) of America's cropland (400 million acres) was in capability classes I-III, compared with 83 percent in 1967 and 1958. In 1975 only 10 percent of the cropland was in capability class IV, compared with 11 percent in 1967 and 1958. Cropland in capability classes V-VIII also declined—in 1975 it was 4 percent, compared with 5 percent in 1967 and 6 percent in 1958.[8]

And on the subject of cropland quality the SCS surveys are well-fitted to provide a reliable assessment.

Why the numbers do not add up

A reasonable reader will surely ask at this point: What is the basis of the widely-publicized claims by the National Agricultural Lands Study, the Soil Conservation Service, the Department of Agriculture, the Council on Environmental Quality, and other organizations, that we are "losing" farmland at a rate which they say is dangerous to future nutrition and the economy? The NALS and SCS people do not deny that the trends described above are correctly represented. They say, however, that there has recently been a major break with the past in the rate of urbanization of farmland,

[8] Raymond I. Dideriksen, Allen R. Hidlebaugh, and Keith O. Schmude, *Potential Cropland Study*, Statistical Bulletin No. 578 (Washington: USDA, Soil Conservation Service, October, 1977), p. 2.

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that recent history is fundamentally different from earlier history. More specifically, they say that the rate of conversion of farmland jumped around 1967 from less than 1 million acres a year to around 3 million acres a year. We must examine closely the SCS survey evidence that they offer for that claim, and we will find the evidence is flawed.

Before discussing the methods used in the SCS surveys, please consider for yourself whether a "loss" of 3 million acres a year is at all plausible in light of other contradictory data, and of the following general considerations.

1. One of the troublesome aspects of dealing with the statistical statements being publicized by NALS is that many different versions are given for the same magnitude, even by the same organization. For example, on the first page of the "Executive Summary" of the NALS "Final Report" we find:

> The United States has been converting agricultural land to nonagricultural uses at the rate of about three million acres per year—of which about one million acres is from the cropland base. This land has been paved over, built on, or permanently flooded, i.e., converted to nonagricultural uses. For practical purposes, the loss of this resource to U.S. agriculture is irreversible.

The quote says that this estimate includes conversions to water. Elsewhere in NALS literature, however, we come across an estimate of 3 million acres yearly that does *not* include conversions to water. And in the NALS literature we sometimes find a figure of 2 million acres a year for urban land, and other times we find a larger figure for urban and water. And we also frequently read that the Potential Cropland Study data indicate that 675,000 acres of cropland became urban or water, which is quite at odds with the "one million acres" in the quote just above for which no documentation is shown anywhere (which is not to say that 675,000 acres is nearly correct, either).

Another example: A November, 1979 SCS memo (revised February, 1980) called "Basic Statistics: 1977 National Resources Inventory" gives 89,956 million acres for "urban and built-up land." In the Agricultural Land Data Sheet prepared by NALS (presumably from the same 1977 NRI) 68,789 is given for "urban and built-up" in 1977 and 25,408 for "rural transportation," a total of 94,197 million acres. These discrepancies do not seem explicable as typographical errors, and they make it very difficult for the outsider to come to grips with this body of data and the NALS presentation of it. (These are only the *internal* inconsistencies in the SCS-NALS

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material; we have yet to consider *external* inconsistencies. Still within the USDA, the Economic Research Service's estimate for "urban and built-up" is 61 million acres whereas the NRI estimate is 90 or 94 million.)

2. NALS and everyone else agrees that the *total* urban-and-built-up area in the United States (excluding transportation) was around 31-35 million acres as of 1967.[9] There is also agreement that the *rate* of urbanization had been constant or slowing, a lower rate in 1960-1970 than in 1950-1960. Yet NALS says that over only ten years, from 1967 to 1977, there was a 29 million acre *increase* in urban-and-built-up land.[10] That is, over the course of more than two centuries, in the process of reaching a population of about 200 million people, the U.S. built towns on between 31 and 35 million acres. Then (NALS says) suddenly in the course of another 10 years, and with a population increase of only 18 million people, the urban-and-built-up acres increased by 29 million acres (almost none of it due to transportation), a near-doubling. Does that make sense?

To put it differently, the long-run trend in the decades up to 1970 was about one million acres of *total* land urbanized per year. SCS asserts that the rate then jumped to between 2 and 3 million acres yearly from 1967 to 1975 or 1977, depending on which version you read. Even stronger, if the 1 million acre yearly trend held until 1970, then SCS would necessarily be estimating an even *higher* rate for the shorter period from 1970 to 1975, up to 5 million acres a year. Can you remember any basic changes taking place in our society that would be consistent with a shift of that magnitude—from one million to three or five million acres yearly?

The South and the swamps

3. SCS shows (Table II) the biggest "loss" of agricultural land in general, and of cropland in particular, in the South—12.0 out of 23.2 million total acres, and 2.5 out of 5.4 million cropland acres respectively. But it is amply clear that the land story of the South in recent decades has been the massive abandonment of cropland to for-

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[9] a) Census of Population figures are 25 million and 34 million acres for 1960 and 1970 for "urban area"—say 31 million for 1967—plus 25 and 26 million acres for transportation in 1960 and 1970 (ESS estimates). b) SCS's estimate is 64 million acres for 1977 for urban (1977 NRI, 1980) with an increase of 29 million (including transportation, but that shows little change) since 1967, which implies 35 million acres in 1967.

[10] Ernest McGill, *Federal Data on Agricultural Land Use*, Technical Paper II, The National Agricultural Lands Study, March 1981. Written from material prepared and supplied by Allen Hidlebaugh and Joseph Yovino, p. 8.

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TABLE II. *Agricultural Land Converted to Urban, Built-up, Transportation, and Water Uses by Selected Census Regions, 1967 to 1975*[1]

REGION	CROPLAND	PASTURE-LAND AND RANGE-LAND	FOREST-LAND	OTHER AGRI-CULTURAL USES	TOTAL
West	0.7	1.3	0.5	0.5	3.0
North Central	1.6	0.8	0.7	2.1	5.2
South	2.5	2.1	3.9	3.5	12.0
Northeast	0.6	0.1	1.4	0.9	3.0
Total	5.4	4.3	6.5	7.0	23.2

1 Source: *Potential Cropland Study*, USDA-SCS, 1977. In its text NALS talks about 24 million acres—17 million connected to urban and 7 to water—and therefore I have adopted their usage in the text, despite the 23.2 million acre total in this table.

est and to scrubland simply because it is no longer economical to farm cotton and similar crops.

That there is something wrong with the SCS land-conversion data may be seen in an analysis of purported conversion of agricultural land to urban and water in the Southeast. If we look at the Southeast states alone—Florida, Georgia, North Carolina, and South Carolina—we see in Table II that they account for 5.9 million acres, fully 25 percent of the 23.2 million total U.S. acres said to be converted to urban uses. These states contain about 7.7 percent of total U.S. population. This seems implausible. Nor have those states accounted for a huge preponderance of recent population increase.

Part of the reason for these numbers is conversion to water—3.3 million acres of the total 5.9 million acres converted in the Southeast—and this does not seem to signal an agricultural problem of any sort.[11] This is probably mostly *swamp*, because this quantity is much larger than the 2.6 million acres they estimate as having shifted into urban uses in the Southeast; it clearly does not represent reservoirs or other bodies of water for urban purposes. (Chances are that much of the 3.3 million acre shift is simply due to reclassification of the Everglades.) Furthermore, the 2.6 million acres said to be urban-

11 Conversion to water hardly seems worrisome from a farm production point of view. No owner will voluntarily convert farmland to water unless the farmland is of little value. And the indicated water conversions in the Southeast are all of land class 3g and below, that is, poor land. Also, the conversions are all within 4 of the 15 land classes, with zeros in the other classes, suggesting a few big shifts rather than a broadly based pattern.

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ized in the Southeast is about 15 percent of the U.S. total of 17 million acres. This suggests that some land that simply went out of cropland use probably became recorded as urban, because we know that much of the South has done just that—either become forest or gone out of use entirely.

In short, worry about the loss of "prime farmland" (or *any* farmland) to urbanized areas in the South seems groundless. And these "conversions" in the South are a very substantial chunk of NALS's all-U.S. figures; removing them would lower the "loss" figures by about half. The same is true of the Northeast. In New Hampshire the tillable area was 2,367,000 acres in 1860, but by 1974 it had declined to 172,000 acres, though New Hampshire now has lots of forest.[12] Would it make sense to worry about loss of farmland in places like New Hampshire? The land went out of cultivation because it was stony and hilly, and because crops grow cheaper in the Midwest, not because of "encroaching" cities.

4. At last estimate, between 1.3 and 1.7 million acres a year of new cropland are being created by drainage of swamps, irrigation, and so on.[13] That is more than the million or so acres a year of cropland that were being urbanized up through 1970—and probably up until now, too.

5. NALS points to migration within the U.S. as being largely responsible for an increased rate of conversion of "prime farmland" since 1967. But recent migration has been largely toward the Sunbelt rather than toward the Midwest, that is, away from rather than toward "prime farmland" areas. The point is even more salient if one is concerned with *export* crops, rather than the table vegetables grown in Southern California.

6. For the period 1900-1950, the number of persons per acre remained relatively constant in cities of given size. Given the observed population growth rate in recent years, unless people were moving out of bigger cities into smaller cities at a rate much faster than anyone has estimated, the SCS estimate of newly-urbanized land would imply a sharp break in historical experience with respect to urban densities. Is it reasonable to think that there has been such a major break with history in this respect?

7. There is disagreement whether the rate at which total land was being converted to "urbanized and built up" rose significantly in the 1970's. But there is no disagreement that even if there was

[12] Raleigh Barlowe, *Land Resource Economics,* 3rd ed. (Englewood Cliffs: Prentice-Hall, 1978), p. 48.
[13] M. L. Cotner, M. D. Skold, and O. Krause, *Farmland: Will There Be Enough?* (Washington: USDA Economic Res. Service, ERS 584, 1975), p. 10.

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a rise, it certainly was not in the "urban" category, but rather would have been in "open country and hamlets," and to a lesser degree in nonmetropolitan incorporated places. Apparently much of this possible growth would have been in developments sufficiently far from cities that the homes are without sewers, homes which tend to have relatively large lots. (But please note that such lots are mostly not paved, or built on, which should allay some worry about "paving over" America.) So what we see is *not* "urban sprawl," but rather shifts in population to rural and small-town settings.

The problems of estimation

8. The best method for studying the rate of urbanization is a series of aerial photographs. No nationwide study has yet been done for the U.S. as a whole, but Zeimetz, et al., studied photographs of the 53 counties that grew fastest between 1960 and 1970, and Fischel re-analyzed their findings.[14] These counties accounted for fully 20 percent of the total population increase for the U.S. between those years, but required only 85,560 additional acres for urbanization. And this increase of 85,560 acres represented only a 23 percent increase in urbanized areas in these fastest-growing counties. One would reasonably expect that the rate of increase in *less* rapidly growing counties would therefore be less than 23 percent. Yet the NALS figures imply a much higher rate for the U.S. as a whole, an increase of *47 percent* for the country as a whole between 1967 and 1977. It seems most implausible that the U.S. as a whole should have a much higher rate of urbanization than the fastest growing counties.

To put it differently, if the rest of the U.S. were to require additional land at the same ratio of land per person as the fastest growing counties, the nationwide increase would have been 427,800 acres converted yearly to urban uses, according to Fischel. Compare this with the 2 million acres figure from the 1967-1975 PCS estimate, or the 2.9 million (or 3.3 million) acres estimate from the 1967-1977 NRI comparisons. And to repeat, aerial photography is by far the most accurate method of measuring this phenomenon.

The estimation methods used by NALS and SCS would be

[14] Kathryn A. Zeimetz, Elizabeth Dillon, Ernest E. Hardy, and Robert C. Otte, *Dynamics of Land Use in Fast Growth Areas* (Washington: Economic Research Service, U.S. Department of Agriculture, Agricultural Economic Report No. 325, 1976). William Fischel, "The Urbanization of Agricultural Land: A Review of the Natural Agricultural Lands Study," forthcoming in *Land Economics*, 1982.

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grounds for suspicion even if their results did not conflict with those of more reputable studies—as we have just seen they do.

The U.S. Geological Survey, noting these discrepancies, compared its own careful aerial-photography method with SCS's somewhat hit-or-miss method in selected counties within four states in which they had both done work. USGS found very large SCS errors in three of the four states, including a discrepancy of over 2 million acres in Florida. These mistakes amount to 28 percent of *total* urbanized land as estimated by SCS, a huge amount by any criterion.

NALS based its case for the conversion of farmland into urban areas entirely on the 1975 Potential Cropland Study (PCS), even though they had rejected other SCS data comparisons as wildly inaccurate for this particular purpose. From all the information I have been able to obtain, the amount of data collected in that PCS study is far too little to support the estimates of urbanization NALS uses it to make. I figure roughly as follows: Nine 160 acre plots were selected from each of the 506 counties in their sample. Within each of these plots there were nine observations, but they contain little more information than a single observation for this purpose. We can therefore assume that there were about 4554 observations. From the PCS tables, I calculate that about 1/240 of the U.S. is land converted to urban areas from "prime" categories between 1967 and 1975. Multiplying this by 4554 suggests that about 19 plots changed from "prime" to "urban." Obviously 19 observations would be thoroughly inadequate information for the individual regions, let alone for the U.S. as a whole.

There are also important likely sources of measurement error and bias in the SCS survey procedures. Perhaps the most serious problem is that there was a progressive narrowing in the agricultural land sampling frame which necessarily biases the estimates in the direction of showing more conversions than actually occurred. That is, as soon as a plot is designated "urban" it is removed from the sampling frame and cannot subsequently be classified as "agricultural" even if the original designation was in error. And there is no possibility in the procedure for counterbalancing errors of previously classified urban land being classified as agricultural, because urban land was never reexamined after it was taken out of the agricultural inventory.

Bad news travels fast

The episode of the very misleading assertions about conversion of farmland to urbanized uses is interesting—and frightening—in

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several ways. First, it illustrates how public officials and agencies can be astonishingly casual about important numbers. NALS blithely publicized a figure of 3 million acres yearly even though this is *three times* the historical rate, and they did so in the face of a formidable array of other (sound) research suggesting that the one-million acre historical rate had not changed. Second, it shows how, with a government budget for printing plus the "official" imprimatur, a quite inaccurate piece of information can be disseminated so widely that it becomes common knowledge. Third, it illustrates how shaky the structure of social-science research knowledge is. One badly done survey of very inadequate size—a survey carried out originally for very different purposes—was able to serve as the basis for wrong and misleading statements without the matter being a case of obvious scientific fraud. Fourth, the NALS publications are shot through with glaring internal inconsistencies, but the press—which has given much attention to the matter—never noticed. The media seem to have looked no further than the publicity handouts and "executive summaries," and certainly never investigated far enough to learn that the research staff of NALS, which was bitterly at odds with the "politicos" who directed the study, renounced the publicized figures that supposedly came from it.

I did not take up the fascinating issues of why the misleading scare stories were so readily—even eagerly—accepted by a wide public, or who the parties are who have a special interest in instituting public policies to restrict the conversion of farmland. That will make good story to tell on another occasion.

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Inflation and the American economy

MARTIN FELDSTEIN

How did the recent high rates of inflation originate? And can an understanding of these origins help to reduce the current rate of inflation or to prevent another round of increases in the future?

For monetarists, a search for the origins of inflation is very uninteresting. As Milton Friedman once said, "Inflation is always and everywhere a monetary phenonomen." Such a statement is both true and uninformative. It is true because a sustained increase in prices cannot occur without an increase in money. But it is uninformative because it fails to explain why the monetary authorities have allowed a sustained monetary increase.

In trying to identify more basic causes of inflation, it has been common for nonmonetarists to emphasize the series of particular events that were associated with spurts of inflation during the past two decades. There is no doubt that if these events had not occurred, or had occurred differently, the path of inflation would also have evolved in a different way. Nevertheless, it would be wrong to put too much emphasis on these specific events. It was not events but *ideas* that propelled the increasing rate of inflation. The upward drift of the inflation rate was the result of a fundamental set of beliefs about the economy and about macroeconomic policy that

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were shared by economists and policy officials during the past two decades. It is these fundamental beliefs that I want to emphasize after briefly discussing the series of events that catalyzed the accelerating inflation.

From 1962 through 1965, the inflation rate (as measured by the commonly used GNP deflator) averaged only 1.8 percent a year. This period had begun with a relatively slack economy characterized by a low rate of capacity utilization and a relatively high rate of unemployment. The Kennedy administration had cut taxes and increased the rate of monetary expansion in 1962, but the substantial slack and the previous price stability permitted a rapid expansion of output with little upward pressure on prices.

In contrast, the second half of the 1960's saw an increasing pressure of demand and a rising rate of inflation. Lyndon Johnson was accelerating the war in Vietnam and was expanding rapidly the social welfare expenditures of his Great Society program. Because the war was politically unpopular, Johnson rejected the advice of his economic counselors and refused to raise taxes. Instead, he permitted the deficit of the federal budget in 1967 to reach a new postwar high. Interest rates were already beginning to rise and, in an attempt to prevent a further rise in response to the increased supply of government debt, the money supply was increased substantially. The result of this was an overexpansion of demand, a fall in the unemployment rate of adult males to only 2 percent, and a rise in the inflation rate to 5.2 percent in 1969.

The inflation rate began to subside in 1970 with a significant slump in economic activity in 1971 and 1972. Although the fall in inflation was welcome, the rise in unemployment was not. The government therefore ran a very large deficit and the money supply was increased at a rate that had not previously been seen in the postwar period. By 1973, the unemployment rate dropped to the lowest level since 1969, capacity utilization was again very high, and the inflation rate jumped to 5.7 percent.

The sharp jump in energy prices between 1973 and 1974 after the OPEC countries curtailed oil production caused both higher inflation and a general contraction of economic activity. Although money growth was reduced in 1974, it jumped to even higher rates in 1975 and 1976. The government deficit and the unemployment rate also reached new postwar peaks. While other countries such as Germany, Austria, and Switzerland experienced only mild and temporary increases in inflation, the U.S. inflation rate spurted to a new high as consumer prices rose more than 10 percent a year.

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The Carter administration expanded aggregate demand and between 1976 and 1979 the adult male unemployment rate fell by nearly one-third. During these years there were sizeable deficits and rapid money growth even though the inflation rate rose from 5.2 percent in 1976 to 8.5 percent in 1979.

The expansion lost momentum in late 1979 in response to the relative decline in the growth of monetary aggregates (M1B declined 1.2 percent in real terms and the new M2 rose only 0.4 percent) and the surplus in government spending (the small federal deficit being outweighed by the larger surplus of the state and local governments). The recession began in January 1980 and the economy dropped sharply in the second quarter of the year, but in June the Federal Reserve reversed direction and the money supply began another period of very rapid growth. Between May and November, M1B grew at an annual rate of 15.5 percent and M2 grew at 14 percent. By the fourth quarter of the year, real GNP was rising very rapidly (an annual rate of increase of 5 percent) and the corresponding price index was increasing at more than 11 percent.

So much for the facts. The historical record shows that the deliberate expansionary policies of successive administrations, particularly the use of monetary expansion in an attempt to limit interest rates, contributed directly to our rising rate of inflation. But what were the fundamental characteristics of economic thinking during the past two decades that guided the policies that produced our unfortunate inflationary experience?

The four misunderstandings

In referring to the economic thinking that guided policies, I do not mean to imply that the rising rate of inflation was chosen after a rational evaluation of the costs and benefits of alternative policies. I believe that the increasing rate of inflation, like the adverse consequences of a number of other government policies, was largely the unintended and unexpected by-product of well-meaning policies that were adopted without looking beyond their immediate purpose or understanding the magnitudes of their adverse long-run consequences. Expansionary monetary and fiscal policies have been used throughout the past two decades in an attempt to reduce the unemployment rate *without* anticipating the adverse effect on the inflation rate that eventually followed.

It is useful, I think, to distinguish four different kinds of mis-

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understandings that contributed to these inappropriate policies: the misunderstanding of unemployment; the misunderstanding of the Phillips Curve; the misunderstanding of monetary policy; and the misunderstanding of the cost of inflation.

It was easy enough to misunderstand the nature of unemployment.[1] The Keynesian tradition, which dominated the thinking of most economists, emphasized the involuntary nature of unemployment and the equivalence of unemployment to inadequate aggregate demand. The high unemployment rates of the early 1960's no doubt did reflect a lack of demand and unemployment did fall without any appreciable effect on inflation.

But by the mid-1960's the economy had already reached a Keynesian full-employment level, or what Milton Friedman later called the natural rate of unemployment. At an unemployment rate of 4 percent, the unemployed were either voluntarily out-of-work or experiencing the kind of unemployment that was not very responsive to increases in aggregate demand. Some of the unemployed were merely in transition between jobs or had just entered or returned to the labor force. Unemployment insurance not only prolonged the period between jobs but also encouraged seasonal and temporary layoffs. Nearly a third of the unemployed were teenagers, a group with relatively weak labor force attachment and weak incentives to find work. Even in the overheated economy of 1969, their unemployment rate remained over 12 percent.

The true character of unemployment was not appreciated at the time, and monetary and fiscal policies were used to keep the unemployment rate below 4 percent in the second half of the 1960's. The misunderstanding of unemployment continued in the 1970's. The natural rate of unemployment increased in response to the changed demographic composition of the labor force, the more extensive unemployment benefits, the growth of welfare programs with work-registration requirements, and the like. Most experts now agree that an unemployment rate of less than 6.5 percent would currently induce an increasing rate of inflation. This was not recognized and the unemployment rate was driven by expansionary policies to 6.0 percent in 1978 and 5.8 percent in 1979, with the result that inflation accelerated from 5.8 percent in 1977 to 9.0 percent in 1980.

Closely related to the mistaken perception of unemployment was the misunderstanding about the Phillips Curve. Soon after the

[1] For a fuller description of this, see Martin Feldstein, "Economics of the New Unemployment," *The Public Interest*, No. 33, Fall 1973.

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British economist A.W. Phillips published in 1958 his famous statistical relationship between inflation and unemployment, it was seized upon by economists on both sides of the ocean as offering a stable menu of policy options. One could have low inflation and high unemployment, or higher inflation and low unemployment. In 1960, two of the leading figures of American economics, Paul Samuelson and Robert Solow, presented an American version of the Phillips Curve. Although they noted that it was neither as favorable nor as apparently stable as the British version, their presentation helped to make the Phillips Curve a basic tool of policy analysis in the 1960's. Faced with the trade-off implied by the statistical Phillips Curve, many economists and politicians concluded that it made good sense to accept a permanently higher inflation rate to get the benefits of a lower rate of unemployment.

We now recognize the deceptive nature of the Phillips Curve, and understand that the apparent trade-off between unemployment and inflation is only a temporary or short-run relationship. Over a period of even a few years, it is not possible to lower unemployment by accepting a higher rate of inflation. Although unemployment can be *temporarily* reduced by accepting an increase in the rate of inflation, the higher rate of inflation soon gets built into the expectations of all market participants. Even when the excess demand is eliminated, the higher inflationary expectations keep the actual inflation rate at a higher level. Any further temporary reduction in unemployment requires a further increase in the built-in inflation rate. And lowering that established rate of inflation apparently requires a period of unemployment during which the actual rate of inflation first falls and then inflationary expectations are gradually reduced.

The attempt by governments during the 1960's and 1970's to move "up" the Phillips Curve to lower unemployment and higher inflation was therefore repeatedly frustrated. Inflation rates rose while unemployment was only temporarily lowered. In the end, the misunderstanding of the Phillips Curve has contributed to a much higher inflation rate. Moreover, by focusing employment policy on aggregate demand management instead of on removing distortions in the labor market, belief in the Phillips Curve also caused the unemployment rate to remain higher than it might otherwise be.

The third misperception that has contributed to inflationary policies has been the misunderstanding of the interaction between monetary policy and tax rules. Because the monetary authorities

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and their critics ignored the taxation of interest income and the tax deduction of interest payments, they believed that the cost of credit was high and rising when it was in fact low and falling. The monetary authorities therefore expanded the money supply in an attempt to ease credit conditions when credit was already too cheap.

The fourth and final misunderstanding that has caused macroeconomic policy to be too stimulative is the misunderstanding of the adverse consequences of inflation. The leading American economists of the 1960's and the 1970's did not echo the concerns of earlier conservative economists such as Joseph Schumpeter, who warned that inflation would weaken the social framework, or Freidrich Hayek, who cautioned that inflation would create imbalances that could only be corrected by a major contraction. Rather, opponents of inflation like Milton Friedman pointed only to the resulting reduction in the use of non-interest-bearing money balances, a view which James Tobin derisively dismissed as mere shoeleather costs. This attitude—that the costs of inflation were minimal—no doubt contributed to the feeling that a reduction in unemployment was worthwhile even if it raised the rate of inflation.

Inflation's true costs

What have been the costs of inflation in the United States? Because inflation erodes the purchasing power of any level of money income, it is easy for the public to confuse the general rise in the price level with the real slowdown of economic growth. An employee typically receives a pay increase once a year and then watches as his purchasing power is eroded by the rising price level. It is not surprising therefore that he blames much of the slow rate of growth of his real income on inflation rather than on OPEC, or excessive regulation, or other real factors that have caused a decline in the growth of the value of output per man-hour.

Some economists have gone so far as to claim that the only reason that the public dislikes inflation is that they fail to distinguish between the fall in productivity growth that actually reduces the growth of *real* income and the rise in the price level that appears to do so. This is surely far too extreme. Although the general public may not fully understand the impact of inflation on the economy—and I am certain that we as economists do not yet understand it—they are very much aware of the *uncertainty* that inflation causes in their lives. The high and uncertain rate of infla-

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tion has made it virtually impossible for an individual to make long-term financial plans. Saving for retirement, buying a home with a mortgage, or purchasing life insurance are just the three most obvious examples of the way in which careful financial planning becomes impossible when the value of the dollar may fall to less than 10 cents in 25 years at the current rate of inflation.

The inability to make long-term financial plans affected not only individuals but also businesses, and no doubt caused both individuals and companies to make choices that promised short-run and relatively certain rewards instead of longer-term and potentially more productive options. For individuals, this meant a reduced rate of personal saving and the allocation of personal investment to gold and other potential "stores of value." For businesses, this meant foregoing long-lived projects in favor of short-term investments in equipment or in the acquisition of existing businesses. Special problems were also created for banks, thrift institutions, and insurance companies that held large portfolios of nominal assets with fixed interest rates.

The most direct effect of inflation was to reduce the rate of return on investments in plant and equipment. The primary reason for this has been that the tax law and inflation interact to raise the effective tax rate on the profits earned on investments in plant and equipment and thereby to reduce the net-of-tax rate of return on such investments. This increase in the effective tax rate reflects the use by firms of the "historic cost" or "original cost" method of depreciating plant and equipment for tax purposes, and the "first-in-first-out" method of calculating the value of inventories. Both of these accounting methods have the effect of understating the cost of production and therefore overstating the amount of profits on which tax must be paid. In 1977, the extra tax was $35 billion and raised the total tax on the income of nonfinancial corporations by 50 percent.[2] By 1980, the effect was undoubtedly larger both absolutely and in relation to true economic profits.

More generally, inflation raised the total tax rate on the capital income of nonfinancial corporations that is paid by the corporations themselves, their shareholders, and their creditors. In the mid-1960's, before the inflation rate began to accelerate, the individuals and institutions who provided capital to nonfinancial corporations received 45 percent of the pretax return to capital after all taxes had been paid. By 1979, this 45 percent had been reduced

[2] See M. Feldstein and L. Summers, "Inflation and the Taxation of Capital Income in the Corporate Sector," *National Tax Journal*, 1979.

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to less than 31 percent. This increase in the effective tax rate happened because of the interaction between inflation and the existing tax rules since the statutory tax rates on this investment income were actually reduced during those years.

The reduced rate of return on investments in plant and equipment had the predictable effect of reducing investment in those assets. The value of net investment in plant and equipment was about one-third lower in the second half of the 1970's than it had been in the previous 15 years. Although some part of this decline reflects the generally weak economy, statistical evidence indicates that the low after-tax rate of return on investment was the primary reason.[3]

Experts on productivity agree that the reduced rate of growth of the capital stock was one of the reasons for the substantial slowdown in productivity growth. It thus seems quite likely that the high and uncertain rate of inflation, by reducing the rate of business investment and channelling a disproportionate share of that investment into short-lived assets, contributed to the decline of productivity in recent years.

I do not believe that this exhausts the list of the adverse effects of inflation, or even that all such effects have become visible. If inflation continues or accelerates, new consequences will emerge. But my main object here is not to catalogue or foretell all such consequences, but only to emphasize that these costs of inflation have been misunderstood and underestimated and that this misperception contributed to the inflationary character of macroeconomic policies in the past two decades.

Tax rules and monetary policy

This brings me to the way in which ignoring the fiscal structure of the economy caused a misunderstanding and mismanagement of monetary policy. I believe that the monetary authority's failure to recognize the implications of the fiscal structure caused them to underestimate just how expansionary its monetary policy had been. Moreover, because of our fiscal structure, attempts to encourage investment by an easy-money policy have actually had an adverse impact on investment in plant and equipment. The prescription of "easy money and a tight fiscal position" that has been the conventional wisdom for at least two decades has been an un-

[3] Martin Feldstein, "Inflation, Tax Rules and Investment," *Econometrica,* 1982.

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fortunate guide for American economic policy.

To understand the nature of this misperception, it is useful to recall that until 1951 there was an agreement between the Treasury and the Federal Reserve System to peg the short-term rate of interest at a low value. During the postwar period, when the agreement was in effect, the three-month Treasury bill rate remained at less than 1.5 percent and the yield on long-term corporate Baa bonds remained at less than 4 percent. But even in the dozen years after this formal policy was abandoned, the yield on Baa bonds varied only in the narrow range between 3.5 percent and 5 percent. In contrast, the 15 years that followed saw that rate rise from less than 5 percent in 1964 to more than 12 percent at the end of 1979. It is perhaps not surprising that the monetary authorities, other government officials, and many private economists worried throughout this period that interest rates might be getting "too high." Critics of what was perceived as "tight money" argued that such high interest rates would reduce investment and therefore depress aggregate demand.

Against all this it could be argued, and was argued, that the *real* interest rate had obviously gone up much less. The correct measure of the real interest rate is of course the difference between the nominal interest rate and the rate of inflation that is *expected* over the life of the bond. A common rule of thumb approximates the expected future inflation by the average inflation rate experienced during the preceding three years. In 1964, when the Baa rate was 4.8 percent, this three-year rise in the GNP deflator averaged 1.6 percent; the implied real interest rate was thus 3.2 percent. By the end of 1979, when the Baa rate was 12 percent, the rise in the GNP deflator for the previous three years had increased to 7.8 percent, implying a real interest rate of 4.2 percent. Judged in this way, the cost of credit had also increased significantly over the 15-year period.

All of this ignores the role of taxes. Since interest expenses can be deducted by individuals and businesses in calculating taxable income, the net-of-tax interest cost is very much less than the interest rate itself. Indeed, since the *nominal* interest expense can be deducted, the *real* net-of-tax interest cost has actually varied inversely with the *nominal* rate of interest. *What appears to have been a rising interest rate over the past 25 years was actually a sharply falling real after-tax cost of funds.* The failure to recognize the role of taxes prevented the monetary authorities from seeing how expansionary monetary policy had become.

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The implication of tax deductibility is seen most easily in the case of owner-occupied housing. A married couple with a $30,000 taxable income now has a marginal federal income tax rate of 37 percent. The 11.4 percent mortgage rate in effect in the last quarter of 1979 implied a net-of-tax cost of funds of 7.2 percent. Subtracting a 7.8 percent estimate of the rate of inflation (based on a three-year average increase in the GNP deflator) leaves a real net-of-tax cost of funds of *minus* 0.6 percent. By comparison, the 4.8 percent interest rate for 1964 translates into a 3.0 percent net-of-tax rate and a 1.4 percent real net-of-tax cost of funds. Thus, although the nominal interest rate had more than doubled and the real interest rate had also increased substantially, the relevant net-of-tax real cost of funds had actually fallen from 1.4 percent to a *negative* 0.6 percent.

The consequences of low interest rates

As this example shows, taking the effects of taxation into account is particularly important because the tax rules are so non-neutral when there is inflation. If the tax rules were completely indexed, the effect of the tax system on the conduct of monetary policy would be much less significant. But with existing tax rules, the movements of the pretax real interest rate and of the after-tax real interest rate are completely different. Monetary policy in the last decade was so expansionary in large part because the monetary authorities and others believed that the cost of funds was rising or steady when in fact it was falling significantly.

The fall in the real after-tax interest rate caused a rapid increase in the price of houses relative to the general price level and sustained a high rate of new residential construction. There were, of course, times when the ceilings on the interest rates that financial institutions could pay caused disintermediation and limited the funds available for housing. To that extent, the high level of nominal interest rates restricted the supply of funds at the same time that the corresponding low real after-tax interest cost increased the demand for funds. More recently, the raising of certain interest rate ceilings and the development of mortgage-backed bonds that can short-circuit the disintermediation process have made the supply restrictions much less important and have therefore made any interest level more expansionary than it otherwise would have been.

The low real after-tax rate of interest also encouraged the

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growth of consumer credit and the purchase of consumer durables. It is not surprising that, with a negative real net rate of interest, house mortgage borrowing soared to over $90 billion a year, more than double the rate in the early 1970's. More generally, even households that do not itemize their tax deductions are affected by the low real after-tax return that is available on savings. Because individuals pay tax on nominal interest income, the real after-tax rate of return on saving has become negative. It seems likely that this substantial fall in the real return on savings has contributed to the fall in the personal saving rate and the rise in consumer demand.

The analysis is more complex for corporations because inflation changes the effective tax rate on investments as well as the real net-of-tax interest rate. More specifically, because historic-cost depreciation and inventory accounting rules substantially reduce the real after-tax return on corporate investments, an easy-money policy raises the demand for corporate capital only if the real net cost of funds falls by more than the return that firms can afford to pay. This balance between the lower real net interest cost and the lower real net return on investment depends on the corporation's debt-equity ratio and on the relation between the real yields that must be paid on debt and on equity funds. Although it is difficult to say just what has happened on balance, I believe that expansionary monetary policy reduced the demand for business investment at the same time that it increased the demand for residential investment and for consumption goods.

It is useful to contrast the conclusion of this section with the conventional Keynesian analysis. According to the traditional view, monetary expansion lowers interest rates, thereby reducing the cost of funds to investors, thus encouraging the accumulation of plant and equipment. In the context of the U.S. economy in recent years, this statement is wrong in three ways. First, a sustained monetary expansion raises nominal interest rates. Second, although the interest rate is higher, the real net-of-tax cost of funds is lower. And, third, the lower cost of funds produced in this way encourages investment in housing and consumer durables (as well as greater consumption in general) rather than more investment in plant and equipment. Indeed, because of the interaction of tax rules and inflation, a monetary expansion tends to discourage saving and reduce investment in plant and equipment. The low real net-of-tax rate of interest on mortgages and consumer credit is an indication of this misallocation of capital.

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Perhaps the problems of misinterpretation and mismanagement might have been avoided completely if the monetary authorities and others in the financial community, as well as the Congress and the economics profession, had ignored interest rates completely and focused their attention on the money supply and the credit aggregates. Presumably, under current Federal Reserve procedures, there will be more of a tendency to do just that. But since the temptation to look at rates as well is very powerful, it is important to interpret the rates correctly. What matters for the household borrower or saver is the *real* net-of-tax interest rate. A very low or negative real net-of-tax rate is a clear incentive to overspend on housing and on other forms of consumption. What matters for the business firm is the difference between the real net-of-tax cost of funds (including both debt and equity) and the maximum return that, with existing tax laws, it can afford to pay. The difficulty of measuring this difference should be a warning against relying on any observed rates to judge the ease or tightness of credit for business investment.

The correct mix of monetary and fiscal policies

Since past policies have failed, what should be done? There is widespread agreement on the two central goals for macroeconomic policy: achieving a level of aggregate demand that avoids both unemployment and inflation, and increasing the share of national income that is devoted to business investment. Monetary and fiscal policies provide two instruments with which to achieve these two goals. The conventional Keynesian view of the economy has led to the prescription of easy money (to encourage investment) and a tight fiscal policy (to limit demand and prevent inflation). Our low rate of investment and high rate of inflation indicate that this approach has not worked. It is useful to review both the way such a policy is supposed to work and the reason why it fails.

Keynesian analysis, based on a theory developed during and for the depression, is designed for an economy with substantial slack and essentially fixed prices. This Keynesian perspective implies that real output can be expanded by increasing demand and that the policy mix determines how this increased output is divided between investment, consumption, and government spending. An increase in the money supply favors investment, while a fiscal expansion favors consumption or government spending. Whatever the validity of this analysis in an economy with vast excess capacity and fixed prices,

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it has not been appropriate for the economy of the United States in recent years.

There is a way in which a policy mix of easy money and fiscal tightness could in principle work in our relatively fully-employed economy. The key requirement would be a persistent government surplus. Such a surplus would permit the government to reduce the supply of outstanding government debt. This in turn would induce households and institutions to substitute additional private bonds and stocks for the government debt that was removed from their portfolios. The result would be an increased rate of private capital accumulation. Under likely conditions, this substitution of private capital for government debt would require a lower rate of interest and a relative increase in the stock of money.

Unfortunately, the traditional prescription of easy money and a tight fiscal position has failed in practice because of the political difficulty of achieving and maintaining a government surplus.[4] As a result, the pursuit of an easy money policy has produced inflation. Although the inflationary increase in the money supply did reduce the real after-tax cost of funds, this only diverted the flow of capital away from investment in plant and equipment and into owner-occupied housing and consumer durables. By reducing the real net return to savers, the easy money policy has probably also reduced the total amount of new saving.

The traditional policy mix reflects not only an overly optimistic view about the feasibility of government surpluses but also an overly narrow conception of the role of fiscal policy. In the current macroeconomic tradition, fiscal policy has been almost synonymous with variations in the net government surplus or deficit and has generally ignored the potentially powerful incentive effects of taxes that influence marginal prices.

An alternative policy mix for achieving the dual goals of balanced demand and increased business investment is to combine a tight-money policy and fiscal incentives for investment and saving. Such a combination has now been adopted by the Fed and by the 1981 tax legislation. The tight-money policy can prevent inflation and raise the real net-of-tax rate of interest. Although the higher rate of interest will tend to deter all forms of residential and non-

[4] It might be argued that the inflationary erosion of the real government debt means that the government has in fact had real surpluses despite nominal deficits. But such an inflation adjustment also implies an equal reduction in private saving, indicating that private saving has in fact been negative. The conventional government deficit should also be augmented by the off-budget borrowing and the growth of government unfunded obligations in the social security, civil service, and military service pension programs.

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residential investment, specific incentives for investment in plant and equipment can more than offset the higher cost of funds. The combination of the higher real net interest rate and the targeted investment incentives will restrict housing construction and the purchase of consumer durables while increasing the flow of capital into new plant and equipment. Since housing and consumer durables now account for substantially more than half of the private capital stock, such a restructuring of the investment mix can have a substantial favorable effect on the stock of plant and equipment.

A rise in the overall saving rate would permit a greater increase in business investment. The higher real net rate of interest will in itself tend to induce such a higher rate of saving. This has been supplemented in the 1981 tax act by explicit fiscal policies that reduce the tax rate on interest income and other income from saving.

In short, restructuring macroeconomic policy to recognize the importance of fiscal incentives and of the interaction between tax rules and inflation provides a way of both reducing the rate of inflation and increasing the growth of the capital stock.

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To each according to her worth?

JOHN H. BUNZEL

ON July 14th, 1981, the city of San Jose, California and Local 101 of the American Federation of State, County, and Municipal Employees (AFSCME) ended the country's first municipal strike over the issue of equal pay for comparable worth (in contrast to equal pay for equal work) by agreeing to a $5.4 million, two-year contract that is intended to narrow the salary gap between men and women workers.

By a vote of 295-27, the strikers accepted a city council offer that included (1) $4 million for general pay increases of 7.5 percent in 1981-82 and 8 percent in 1982-83 for the 2,000 clerical, parks, library and other employees represented by the union, and (2) $1.4 million over two years for extra adjustments to about 750 women in "undervalued" female-dominated positions. The "feminist" bonuses were determined by a 1979 study of 280 city jobs conducted by Hay Associates of San Francisco, a personnel consulting firm that was commissioned by the city council to determine whether women are paid less than men. The report took nine months and cost San Jose $100,000.

Mayor Janet Gray Hayes announced that she was "proud to be mayor of the city that took the first giant step toward fairness in the workplace for women." Whether the day the contract was rat-

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ified "will go down in history as the day so-called 'women's work' was recognized for its inherent value to society," as she also declared, remains to be seen. What is important is that the comparability settlement with the city of San Jose was reached through collective bargaining, making this the first time the issue has ever been put on the table and negotiated. As far as the union is concerned, this is only the beginning. It has already pledged that when a new contract is negotiated in 1984, it will continue to treat pay discrimination in terms of the "comparable worth" doctrine.

In simplest terms, comparable worth requires salaries to be determined by the "worth" of a job to the organization (in this case the city of San Jose) in comparison with other jobs. Worth to the organization is measured by a "point-factor" test. The doctrine rejects traditional job evaluation procedures and market rate standards which, it claims, "crowd" women into jobs that are traditionally dominated by women, and thereby perpetuates a system of impermissible sex discrimination. For example, although the job of a nurse is completely different from that of a plumber, a comparable worth analysis might reveal that the work performed by the nurse was worth the same as the plumber's to the employer. If the nurse was paid less than the plumber, the nurse would be entitled to the difference between what her job was worth and the lower wage she actually received.

The San Jose study

In San Jose, a committee consisting of a representative of the Personnel Department and nine municipal employees who belonged to a union (there are eleven different unions in the city) and were familiar with each of the major job areas (parks and recreation, clerical, public works, blue collar, etc.) engaged in a so-called bias-free ranking of 225 non-management jobs in city government. In ranking the jobs, the committee judged each one subjectively in four categories — know-how, problem-solving, accountability, and working conditions. Based on these judgments, each job was then given a numerical rating. "The committee did not set salaries," said David Armstrong, the city personnel official and the only management representative on the committee. "It evaluated jobs. Money was never considered." The salary of each job classification was charted by Hay Associates along with the "point system" rankings. After working for months with scatter diagrams, lines of regression, bar graphs, and computer print-outs, a salary "trend line" was de-

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veloped. Above the line were jobs paid more than would be expected solely from the numerical ratings of value. Below the line, the reverse was true. This trend line became a "fiscal time bomb" as employee unions realized that many of their workers were paid far below that line. In fact, jobs dominated by women fell 2-10 percent below the line while jobs dominated by men were 8-15 percent above.[1]

The study by Hay Associates began in 1979 with questionnaires sent to all city employees, asking them to describe in detail the tasks, responsibilities, working conditions, problems, and requirements of their jobs. The city's personnel department reviewed all of the responses, interviewed 20 percent of the employees at their work locations, and drew up new specifications for every job in the city, describing duties and responsibilities. Then the committee of ten (five men and five women) met two or three times each week for about five months to study and evaluate the jobs. At times, committee members heatedly debated the responsibilities and requirements of various positions. Hay consultants guided the discussion, intervening when needed. Before final evaluations were made, seven of the ten members had to agree.

To measure know-how, for example, committee members were instructed to study both scope and depth of knowledge of practical procedures, techniques, and skills gained through formal training, and education or experience. Categories included Primary, Elementary Vocational, Vocational, Advanced Vocational, and Basic Technical-Specialized, each of which was specified by detailed criteria. Subcategories measured human relations requirements of the job—Basic, Important, or Critical. Thus a senior chemist and senior librarian require the greatest know-how, the chemist the greatest amount of problem-solving, and the senior librarian the most accountability. A secretary was deemed to require the Vocational level of knowledge, and important human relations skills. (Similar kinds of cross tabulations were done for problem-solving, accountability and working conditions for every category of job.)

The following are some examples of the committee's work, with point values assigned for each measurement. KH stands for know-how; PS is problem-solving; AC is accountability; and WC is working conditions. The positions in each job grade, only a few of which

[1] Philip J. Trounstine, a staff writer for the *San Jose Mercury News*, and Jackson Rannells of the *San Francisco Chronicle*, wrote the best accounts of the strike in San Jose. I have drawn in particular on Mr. Troustine's four excellent and detailed articles.

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are listed below, were judged to be of comparable value to the city of San Jose. Pay is annual.

Job Grade 15

Senior Chemist, 501 points, (no sex dominates): KH-264; PS-115; AC-115; WC-7. $29,094.

Senior Librarian, 496 points (female dominated): KH-264; PS-100; AC-132; WC-0. $23,348.

Job Grade 6

Painter, 173 points (male dominated): KH-115; PS-22; AC-22; WC-14. $24,518.

Secretary, 177 points (female dominated): KH-115; PS-29; AC-33; WC-0. $17,784.

Senior Telephone Operator, 178 points (female dominated): KH-115; PS-25; AC-38; WC-0. $15,210.

Senior Water System Technician, 172 points (male dominated): KH-115; PS-22; AC-25; WC-10. $21,710.

The nine day strike ended when the union finally accepted the city's offer of 12 percent wage increases over two years and $1.4 million for the female-dominated job classifications below the trend —but not before Mayor Hayes was called a "turncoat feminist" by union members for declaring that the city did not have the money to pay for AFSCME's own $3.2 million plan that would have brought all jobs to the trend line in four years. Under the final compromise, which the City Council approved by a vote of 8-3, pay for female-dominated jobs will increase at a faster rate than pay for male-dominated jobs (those in this latter and smaller group received no bonuses). Some of the "undervalued" jobs dominated by women will end up less than 10 percent below the line, but others will remain as much as 19 percent below. As Mr. Armstrong observed, by the time the settlement was reached neither the city nor the union was talking about "comparable pay" If that were the case, those above the trend line—for example, the park ranger who is in the same job category as the secretary but is paid $18,304—would see his (or perhaps her) pay reduced to $18,148 a year. "That's simply not an option," Armstrong said. "They'd slap us with an NLRB [National Labor Relations Board] suit so fast our heads would spin."

Nevertheless, the "conceptual agreement" that was worked out between the city of San Jose and the union is regarded as a major breakthrough. Nancy Clifford, a recreation leader who was on the union's bargaining team, said, "We here in San Jose have opened the door for workers all across the country to finally be paid what they are worth." The result is seen by AFSCME as a big improvement over the present system, which in their opinion simply per-

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petuates past discrimination against women workers by offering them the same raises that low-paid secretaries and librarians have always received. From the union's point of view, comparable worth means recasting traditional pay practices into a system of equal evaluation and equal compensation.

The "grand conspiracy"

Both the supporters and opponents of the comparable worth approach agree on one important point: In the San Jose strike, no consideration was given to economic realities of the free market. The city and union went well beyond that point. San Jose's political leaders have virtually pledged to challenge the forces of supply and demand by imposing what one of the three dissenting city councilmen referred to as "artificial controls or standards on the marketplace that fly in the face of our free enterprise system." The business agent for Local 101 of AFSCME explained the union's position very clearly: "We're talking about fundamentally altering the marketplace because the marketplace is inherently discriminatory." But when asked if a local government should take on such a role, and if taxpayers can be asked to pay public employees wages that exceed what would normally be paid in the marketplace, he replied: "You cannot change the marketplace unless someone moves first. There is no free market. The system of wages was set up by a grand conspiracy, so to speak, that has held down the wages of women to minimize labor costs."

The union's former business agent told the city council that any study that compared women's wages in San Jose to women's wages in the marketplace would be meaningless. "The market standard has worked against women workers, the labor of women in the market, for over 2,500 years," she said. "We have to get away from comparing depressed wages to depressed wages." AFSCME wanted, in effect, to dictate to the market what the city should be paying. In a pamphlet for organizers titled "Pay Equity: A Union Issue for the 1980s," AFSCME leaders have clearly stated their position:

> Discriminatory wage patterns continue because jobs are currently not paid according to their relative value to the organization and jobs of equal value are not assigned similar wages. The employer may argue that wages must be comparable to those being paid by other area employers whether they are discriminatory or not. But there will be no pay equity unless the general level of pay for women's jobs is raised in accordance with the findings of the [job comparability] study.

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The question now is whether in 1984, when AFSCME comes back again to complete its mission of pay equity for women, the city will be able to match the union's pressure without raising taxes or laying off librarians or park and recreational personnel, who are members of AFSCME.

Eleanor Holmes Norton, who headed the Equal Employment Opportunity Commission (EEOC) under President Carter, believes that comparable worth is "the issue of the eighties for women." So does Sarah Nelson, co-leader of the National Organization for Women's labor committee. They may very well be right. It is certainly an issue ready-made for a union such as AFSCME, many of whose members are women in low-paying public sector jobs. The union insists workers should be paid on the basis of the value of an employee's contribution to the overall goals of the employer. On the other hand, highly skilled workers such as operating engineers and auto workers who have succeeded in getting high wages would hardly be enthusiastic about replacing the market definition of the value of their work with a committee that would subjectively rate and award points for various aspects of what they do. A plumber might not think he could justify his $28,392 a year (in San Francisco) in terms of the "worth" of his job. Put another way, strong unions demand high wages—and they do not want the favorable wage structure they have achieved through collective bargaining to be jeopardized by some abstract or artificial standard. Besides, there is no reason to believe that higher-paid workers would like to see the long established differences between their pay and that of lower-paid workers disappear simply to enforce what they might regard as someone's vague conception of economic worth.

One thing is clear: Paying women on the basis of the value of their jobs relative to men's has far greater ramifications than does the simple "equal-pay-for-equal-work" concept that was adopted by Congress in the early 1960's and that was also one of the first issues of the feminist movement. The Equal Rights Amendment may be in trouble, but labor and women activists are cheered by several developments that they assert will advance the new egalitarian cause of comparable worth:

—University and women's groups have begun a petition drive at the University of California at Berkeley for a "comparable worth" study to serve as a guide for catch-up raises for workers in traditionally low-paid, female-dominated jobs on campus. AFSCME claims that an informal study by sponsors of the petition indicates that women on the University's 6800-member nonfaculty workforce are paid 18 percent

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less than men. (The petition process is being used because unions have no bargaining power until the completion of elections for exclusive bargaining agents for university employees, which is expected sometime early in 1982.)

—AFSCME brought a complaint against the state of Connecticut in July 1981 that raises the same issue that dominated collective bargaining and led to the nine-day strike in San Jose. The union filed charges of sex discrimination with the EEOC on behalf of five clerical employees, alleging that Connecticut has compensated its workers discriminatorily.

—Last June, the Supreme Court ruled narrowly in a case involving prison guards in Washington County, Oregon (*County of Washington v. Gunther*) that women had a right to bring suits based on alleged discrimination under Title VII of the Civil Rights Act, which was viewed as much broader in scope than the Equal Pay Act of 1963. The court left unanswered the question of whether women who do not allege discriminatory motives can also bring suit. The Court stressed that it was not passing judgment on the theory of comparable worth, but union officials believe that the decision has made it possible for women to use the principle of comparable value to show that they have been discriminated against.

—Earlier this year, the Supreme Court refused to review a decision by the 3rd U.S. Circuit Court of Appeals, which dismissed an attempt by Westinghouse Corporation to have wage discrimination charges thrown out. The case will go to trial in New Jersey unless an out-of-court settlement is reached. Winn Newman, AFSCME's chief counsel who represented the International Union of Electrical Workers in its suit against Westinghouse, claims that the Equal Pay Act is too narrowly drawn to protect against anything but the clearest cases of discrimination against women. Pointing out that it does not take into account the comparable-worth concept, he also states that the union will press complaints wherever it sees fit. "That seems to be the language that employers most understand," he says.

The cost of "some damn study"

As a theory, comparable worth has powerful appeal, especially for unions and feminist groups claiming to speak for women workers who hold jobs that are consistently among the lowest-paid or "undervalued." They can point to the fact that while women over 16 years of age now make up about 41 percent of this country's work force, they are not making income gains on men. According to the *Wall Street Journal*, women earned 64 cents in 1955 for every dollar earned by men. The figure dropped to 57 cents in 1974 and was still less than 60 cents in 1979. Furthermore, millions of women work in clerical or service jobs where salaries are low and chances for advancement are not very promising. The solution? Not

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the marketplace, with its inherent bias against women, say the leaders of AFSCME. Only the true "equity method" can do away with the socially unjust "earnings gap."

When stripped of its rhetoric, the doctrine of comparable worth raises some difficult and practical problems. Not everyone agrees that pay comparability is the best way to redress the earnings gap. Mayor Richard G. Hatcher of Gary, Indiana, the outgoing chairman of the U.S. Conference of Mayors, expressed "concern and apprehension over the San Jose situation. How do you pay for something that you don't have the money to pay for and yet you know it's right?" he asked. Coleman Young, Mayor of Detroit and a former labor leader, said the message from San Jose was that "any time a city gets hung up on an abstract study that makes arbitrary comparisons of jobs but does not take into account the impact on society and its ability to pay, that's dealing in potential anarchy and inviting bankrupcty and the collapse of local government." He added that he was far from convinced that Detroit could learn much from the San Jose experience. "I wouldn't want to put the fiscal status of the city or the labor scales of the city up for judgment on the basis of some damn study," he said. "If a painter makes more than a secretary, then let more women be painters. Equal opportunity and affirmative action is how you do that."

Mayors Young and Hatcher are worried about the intrusion of "comparable worth" into the collective bargaining process, and its consequences for the economy as a whole. They are not alone. Cornell economist George Hildebrand believes that "the real target of the advocates of the theory of comparable worth" is "federal intervention into the occupational wage and salary structure on a very large, and possibly even massive, scale."[2]

Fortune magazine, concerned about attempts to impose wage structures by judicial and administrative fiat, notes that there are two ways to correct imbalances in earnings between the sexes. One is for women to step into higher-income jobs, a "commendable process" rooted in the Equal Pay Act and Title VII of the Civil Rights Act and one that has gained considerable momentum and support

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[2] George H. Hildebrand, "The Market System," p. 102, in *Comparable Worth: Issues and Alternatives,* E. Robert Livernash, ed., (Washington, D.C.: Equal Employment Advisory Council, 1980). The eight essays in this volume provide the most thorough examination of comparable worth, with a focus on whether it is "an effective means for proving discrimination." Published before the strike in San Jose, California, none of the authors could discuss the issue of equal pay for comparable worth in the context of a major city and a union representing municipal employees reaching agreement through collective bargaining.

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in the last ten years or so. "But if the world could be changed by edict, there is a second method that would work much faster. Women could remain in their customary jobs and men in theirs, and employers could be ordered to pay the same wages to all whose work is deemed to be of equal value." That would certainly correct imbalances rapidly. But how severe would be the cost and disruption to the nation's economy? *Fortune* estimates that, at the extreme, "to raise the aggregate pay of the country's 27.3 million full-time working women high enough so that the median pay for women would equal that of men would add a staggering $150 billion a year to civilian payrolls. Such a radical step, of course, seems too preposterous to be taken seriously. But even partial measures . . . would have an enormous impact. . . ."

What has happened in San Jose is an example of "partial measures"—or, as the union sees it, only a first step. The political reality is that, having accepted the principle of comparable worth, there is no turning back for the self-proclaimed "feminist capital of the world." The economic reality is that in the face of little or no increase in public-sector productivity in the years ahead, the union's promise to get all female job categories up to and above the trend line in 1984 will put San Jose in a financial bind. Whereas wage increases in the private sector can at least partially be offset by productivity increases, as urbanologist Norton Long has observed, there is no such justification for the increases which inevitably follow in the public sector. The delivery of goods and services by the city has become more and more expensive as the inflation of local government costs (as in any city, the personnel payroll is San Jose's largest expense), as well as rapidly increasing expenditures for employee pension requirements, strain the budget.

"Isn't an executive secretary worth as much as a plumber?" ask the supporters of comparable worth. Taking the high moral ground, they know the right answer. But this surely is not the only question. One reporter covering the San Jose strike also asked: "Who would foot the bill for a society being paid plumbers' wages?" Ultimately, of course, the taxpayers and consumers would have to underwrite the costs of this new standard. Once such a social commitment has been made, it is not likely to be reversed.

What is "worth" in academia?

What has been called "the murky world of comparable worth" has also reached the academic community. On July 8, 1977, The

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American Nurses Association (ANA) filed a charge of discrimination with EEOC under Title VII of the Civil Rights Act, alleging that women faculty in the School of Nursing at the University of Pittsburgh were paid less per month because of their sex than were male faculty members. The EEOC then issued a subpoena which demanded, for a three-year period, the sex, date of hire, academic degree, tenure status, and initial and present salaries of all faculty members at every rank in three other professional schools at Pittsburgh: Social Work, Health-Related Professions, and Pharmacy. The EEOC claimed the information was relevant because discrimination could be inferred if "women instructors and professors performing similar duties are paid lower salaries than male instructors and professors."

The University refused to provide the salary data on the grounds that disclosure would be an unwarranted invasion of the privacy of its employees and that faculty members in separate professional schools had such different education, training, missions, goals, external funding, students, programs, courses, and course loads that their salaries could not be compared. But a federal District judge rejected the University's arguments and ordered the University to "comply with the EEOC subpoena in its entirety." The Third Circuit Court of Appeals affirmed the lower court's decision, holding that information involving separate professional schools "may provide a useful context for evaluating the practices under investigation" and that the information was relevant because the School of Nursing was "almost totally female." The University has asked the U.S. Supreme Court to review these decisions.

If allowed to stand, the decision of the Third Circuit that members of the faculty may be compared across school and department lines will have a major impact on many colleges and universities throughout the country. In this instance, the EEOC investigator who subpoenaed the information testified that the "sole purpose" of the subpoena was to compare the salaries of Nursing professors with those of Engineering and Pharmacy School professors. This "sole purpose" was based on the EEOC's repeatedly stated belief that all faculty members are "teachers" and therefore must be involved in performing "similar duties." As the University of Pittsburgh has argued, the decision permits the EEOC "to squeeze the academic model into an industrial assembly line mold despite the actual facts of the situation." Simply stated, the issue in this case is whether women who are faculty members in a predominately female professional school can establish sex discrimination *solely*

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by comparing their salaries to those paid to men on the faculties of other separate and distinct professional schools. At no point has either the ANA or the EEOC alleged any intentional discrimination on the part of the University. The charge of discrimination rests solely upon a comparison of the salaries paid for performing dissimilar jobs.

In an *amicus curiae* brief supporting a request for *certiorari* by the Supreme Court, the American Council on Education points out that the academic marketplace, like any other, responds to market forces that reflect supply and demand for faculty services in a specific field. These include such factors as the level of student enrollments, the obligation to research and write, the external competition for faculty services, and the number of new graduates entering the marketplace to compete for available job opportunities. As a result, faculty members in different disciplines command different salaries. Thus it makes little sense to compare the salary of a professor in Petroleum Engineering with a faculty member who teaches Spanish. During the 1979-1980 academic year, Professors of Law, Business Computer Sciences, Medicine, and Engineering at 68 state universities and land-grant colleges had substantially higher salaries than Professors of Agriculture, Education, Fine Arts, and Nursing.[3] The fact that a Professor of Surgery in the Medical School may be a white male and the Spanish professor a black or female is irrelevant in determining their respective salaries, and does not constitute *prima facie* proof of discrimination. One reason the University of Pittsburgh wants the Supreme Court to hear this case is that in its view the Third Circuit court erred in suggesting that the total absence of males on the School of Nursing faculty somehow transformed otherwise irrelevant evidence of male salaries in unrelated schools into relevant evidence. "Under Title VII," it maintains, "apples must be compared with apples and oranges with oranges. If there are no apples available, one cannot force a comparison by calling an orange an apple."

Confusing means and ends

It is no secret that the demand for equality today is being broadened into a demand for what Daniel Bell has termed "a wider set of rights as claims on the community." This is what the fundamental debate over comparable worth is all about. There is no disagreement

[3] "How Much Professors Are Paid," *The Chronicle of Higher Education*, April 14, 1980.

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over the illegality and irrationality of paying women differently when they perform the same tasks as men (equal work), or about the desirability of seeking greater wage and salary equity for women. What *is* in dispute are the extent and causes of the pay differentials. Are women on the average paid less because they are discriminated against? Put another way, would secretaries and librarians get the same low pay if these jobs were held by men, or are secretaries and librarians low-paid because they are women?

The fact is there are no simple answers. A variety of social and economic factors can and do account for the different earning patterns of men and women that have existed for some time. While there is more than a little evidence that women are concentrated in low-paying jobs, it is not easy to determine what portion of the male-female pay differences are related to exclusionary employment practices rather than to other "work-productivity related factors" such as seniority, skills, performance, higher turnover, differences in union characteristics, differences in labor market conditions, etc. In a market economy such as ours, some jobs will always pay less than others. If many of these jobs are disproportionately filled by women, it may be due to differences in education and qualifications, the effect on job skills of discontinuous participation in the labor force (most married women leave the labor force during their child-bearing years and many never re-enter), geographical movement as women follow their husbands, and greater interests and responsibilities in the home and family.[4] Any or all of these considerations reflect socialization toward traditional roles that, for many women, begins in childhood. In many cases, this socialization better explains the persistent earnings gap between men and women than does the narrow, single-track charge of outright sex discrimination. Certainly discrimination against women seeking admission to university graduate programs or to law and medical schools has also affected their access to higher-paying professional jobs. But this prejudicial outlook and practice is no longer the norm.

One of the most tenacious contentions of the "truly committed" affirmative actionists is that statistical underepresentation of women and minorities in the work force or on a college faculty provides irrefutable, indeed *prima facie*, evidence of discrimination. This argument has led to a sophistic manipulation of the concepts

[4] For an excellent analysis of group differences in occupational success that goes against the grain of much contemporary thinking, see "Sex Discrimination? The XYZ Affair" by Carl Hoffman and John Shelton Reed in *The Public Interest*, No. 62, Winter 1980.

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of "discrimination" and "equal opportunity," culminating in a federal policy that has transformed a legitimate Executive Order to ensure equal treatment into a wilful command to hire immediately more members of so-called preferred groups. Thus affirmative action has subordinated "equal treatment" to a policy of preferential treatment based on a set of specific result-oriented procedures. We have been told that quotas (the more agreeable term is "numerical goals and timetables"), are the means by which discrimination can be abolished and that the results of quotas will in themselves constitute proof that discrimination is being contained or defeated. After all, if quotas are successfully enforced, will not the employment statistics reveal that discrimination has ceased to exist?

The advocates of equal pay for comparable worth make use of a number of these assumptions that have supported affirmative action during the 1970's. For example, they claim that the fact that women earn less than men is proof of discrimination. Once the pay differentials are removed, it is maintained, the effects of prejudice and discrimination will be expunged. Stated differently, the labor market undervalues "women's jobs" and therefore it is the market that is discriminatory. To end this discrimination it is necessary to alter market outcomes by the strategy of "comparable worth," which will establish pay structures to compensate directly for wage discrimination arising from the "crowding" of women into certain low-paying occupations, trades, and professions.

The problem is that the forces that influence market outcomes are complex and the doctrine of comparable worth, while it might increase wages for some women, would almost certainly have other unintended, even opposite, consequences.[5] Professor Cotton Mather Lindsay points out that without some indirect way to infer the results of market wage determination, mere identification of wage disparity is not proof of discrimination. Furthermore, "even with conclusive proof that discrimination in certain occupations results in crowding women into others, there is no way, without the same

[5] Comparable worth "cannot be viewed as a panacea," acknowledges the 1981 report of the National Research Council (established by the National Academy of Sciences in 1916) that was prepared under contract to the U.S. Equal Employment Opportunity Commission. The report is generally sympathetic to the concept of comparable worth and believes it merits serious consideration. But it recognizes, for example, that raising wages of jobs held by women through a comparable worth strategy might have various effects, including "reducing employment either because employers shift to alternative, less labor-intensive methods of production or (if the new labor costs were paid and passed on) because consumers might switch to other, less expensive goods or services." See *Women, Works and Wages: Equal Pay For Jobs of Equal Value* (Washington D.C., National Academy Press), p. 67.

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supply and demand information, to know what adjustments in wages to make." The "right" wage in a crowded occupation is unlikely to be precisely equal to the wage of some "comparable," uncrowded occupation. "If we could control for *all* variables affecting demand and supply," Professor Lindsay observes, "correct wage differential adjustments might be made. To date, however, academic statistical efforts to replicate the effects of labor market forces on a particular job do not encourage confidence in the ability of government agencies or the courts to do the same thing for all jobs." In short, the concept of comparable worth rests on a will o' the wisp. It assumes that occupations similar in their demands for knowledge and responsibility will pay equal wages when there is no discrimination. But, as Professor Lindsay asserts, this assumption is incorrect.

Another principle of affirmative action that the comparable worth supporters accept is that equal access and treatment today is not enough. Equal opportunity must produce equal results. Relying on a "numbers" definition of discrimination, federal affirmative action policy has not been to promote equality of opportunity but what the Carnegie Commission has called "an equality of forced results." Again, means and ends are inextricably intertwined. The inequalities that quotas are presumed to diminish originate in widely dispersed aspects of our social and political experience. But quotas may too readily provide a disincentive to transform these areas of our national life since they will encourage many to believe that discrimination can be dealt with by relatively mechanical means.

In addition, the assumption behind this principle is flawed. At a time when more women than ever before have become bankers, business managers, professors, lawyers, doctors, and engineers, as well as firefighters and bus drivers, it is hard to assert that women have been denied equal access to jobs. After all, equal pay for equal work is the law—and it has been carried out. Yet the gap between the earnings of men and women continues to widen, "proving" (so we are expected to conclude) that their worsening status is due to "discrimination." But if that is the reason, as Gus Tyler, Assistant President of the International Ladies' Garment Workers' Union, has pointedly remarked, then we must also conclude—"it seems common-sensically improbable," he says—that pay discrimination against women is more severe today than a full generation ago. "Such a conclusion is believing what we are not seeing." Pay discrimination may be the easiest and quickest explanation but it is not sustained by other and more searching analyses of the data.

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Is the genie out?

Many other complicated issues are raised by the concept of comparable worth that cannot be analyzed here. If the concept were widely adopted, how long would it be before both governmental agencies and the courts would find themselves involved in the disagreeable task of deciding what a particular job is worth compared to other jobs? How would comparable worth affect this country's international competitive position, labor-management relations, labor costs, and inflation, and how individuals decide to choose one job or career over another? How would it affect the American trade union movement as a whole? Professor Herbert R. Northrup of the University of Pennsylvania's Wharton School reports that Sol Chaikin, president of the International Ladies' Garment Workers' Union (which is 85 percent female), spoke against a resolution at the 1979 convention of the AFL-CIO that seemed "both to support the comparable worth theory and oppose it":

> I'll be damned if I know a way to get the women more money. . . . The value of their work isn't set by theoretical principles but on the value of the work in the marketplace, and in the face of competition from overseas, where garment workers made 30 cents an hour. . . . Just to pass a resolution grounded on pie-in-the-sky, to be on the side of the angels, doesn't mean a thing.[6]

The U.S. Supreme Court's 5-4 ruling in *County of Washington v. Gunther* in June 1981 *does* mean something. Precisely how far the Court will go will be seen only in the case-by-case development of wage discrimination law in the federal courts. The Court held that the Bennett Amendment to Title VII of the Civil Rights Act does not restrict Title VII's prohibition of sex-based wage discrimination to claims of "equal pay for equal work" stipulated in the Equal Pay Act. Instead, claims of sex-based wage discrimination can be brought under Title VII even though no member of the opposite sex holds an equal but higher paying job, provided that the challenged wage rate is not exempted under the Equal Pay Act's four affirmative defenses: seniority, merit, quantity or quality of production, or any factor other than sex. It did not decide whether a job traditionally held by a woman that is paid less than, but is comparable to, a job traditionally held by a man, constitutes a case of unlawful sex discrimination under the Civil Rights Act. In fact, the

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[6] The questions raised above and many similar ones are discussed in Herbert R. Northrup's paper, "Wage Setting And Collective Bargaining" in *Comparable Worth: Issues and Alternatives*. The specific statement of the ILGWU's president is on p. 135.

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Court went out of its way to say that it was not addressing the far-reaching issue of comparable worth.

A careful reading of the majority and minority opinions in *Gunther* makes clear that the Court had difficulty with the decision. In writing the dissent, Justice William Rehnquist argued at great length that the Court's "narrow holding" (which "is perhaps its saving feature") cannot be supported by the legislative history of the Equal Pay Act and Title VII. Acknowledging that the language of the Bennett Amendment is ambiguous, he wrote that "the most plausible interpretation is that it incorporates the substantive standard of the Equal Pay Act—the equal pay for equal work standard—into Title VII." This is simply a case, he concluded, "where the Court has superimposed upon Title VII a 'gloss of its own choosing'."

The importance of the *Gunther* case cannot be overestimated. A number of lawsuits and court decisions will follow over the next several years, probably including one or two by the Supreme Court, that will determine how far or in what way comparable worth will ultimately be followed. Donna Lenhoff, staff attorney at the Women's Legal Defense Fund in Washington, D.C., already anticipates favorable rulings for the "vast majority of working women who are segregated into the 'female ghetto' of low-paying traditionally women's jobs—secretaries, nurses, librarians, 'pink-collar' workers." What *Gunther* has done is to remove "the primary legal barrier to challenging such wage determinations when they are based, at least in part, on unlawful sex-stereotyping." [7]

If AFSCME has its way, comparable worth will be on the negotiating table in all the jurisdictions it represents around the country. Public employees' unions regard it not only as a powerful political lever for getting substantial raises for their women members but as the next stage in this nation's "revolution of rising entitlements." As AFSCME stated publicly in San Jose, the standard of equal pay for equal work is no longer enough. The strike demonstrated that in much the same way that nondiscrimination has been transformed into affirmative action, comparable worth could be the next step beyond affirmative action.

Meanwhile, buoyed by its success in San Jose, AFSCME has now charged the city of Los Angeles with discriminating against its female employees and has served notice that it will force comparable worth into the realm of collective bargaining. Moreover, on September 24, 1981 California's Governor Edmund G. Brown, Jr., signed

[7] Donna Lenhoc, "'Gunther' Opens New Wage Discrimination Territory," *Legal Times of Washington*, July 20, 1981, p. 13.

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into law a bill that makes state government compare its pay of male and female workers, although it stops short of ordering equal pay for comparable work. In the chosen idiom of Gary, Indiana's Mayor Hatcher, "You can't put the genie back into the bottle. It's out on this issue."

TO OUR READERS

It has been evident for some time to the Editors (and, no doubt, to our subscribers) that the subscription service of *The Public Interest* has been inadequate. We wish to thank those who have patiently suffered double billings, lost checks, and missing issues over the years. Beginning with the Summer 1982 issue we will be placing our subscription list on computer to reduce errors and improve service. Every effort will be made to insure that no subscriber misses an issue during this transition, but if there are any problems with your subscription we encourage you to drop a note to our subscription office, which will handle all enquiries. That address is:

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THE EDITORS

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A "republican" view of both parties

JOSIAH LEE AUSPITZ

THERE are already signs that the coming decade will see a rethinking of the meaning and structure of the American political party. The Democrats have appointed a sixty-person commission chaired by Gov. James B. Hunt of North Carolina to propose changes in the procedure for nominating the presidential candidate and allocating delegates to the national convention (it will have reported by the time this article is published). The Republican Party is pledged by a resolution of its 1980 Convention Rules Committee to undertake similar studies; committees chaired by Ernest Angelo of Texas and William H. Stanhagen of Virginia will report on delegate allocation and electoral reform in time for the 1984 convention. John Anderson, who under federal funding regulations could gain several million dollars for the 1984 campaign by converting his National Unity candidacy into a political party, sent out a direct mail circular early in 1981 inviting his contributors to "explore" launching a full-blown party structure. The Citizens Party and Libertarian Party, though their votes were small in 1980, have given talented young activists a lesson in the logic of national party organization. And it cannot be ruled out that leaders of the "new right" will dust off long-standing contingency plans to turn their potent infrastructure of direct mail, broadcast, lobbying,

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and grassroots organizations into a third-party effort if Republicans fail to deliver on social issues.

What is lacking in all this activity is a widely shared constitutional idiom in which to discuss it. When it comes to parties, the jargons of market research, of power politics, and of ideology are spoken more loudly than the native American language of statecraft. Perhaps the best reminder of what is being overlooked can be found in the names of the two major parties themselves. With an intellectual precision rare in American political discourse, they are still called Democratic and Republican and not, as some would seem to prefer, Liberal and Conservative. Written with small letters the partisan labels capture a dualism that was consciously built into American institutions. The Founders had a clear sense that they were constructing a new form of government in which "democratic" and "republican" tendencies would always countervail one another. They designed the American regime, and they so defended it in *The Federalist*, as a democratic federal republic—that is, an extended regime in which popular will, the democratic element, was moderated by enduring but non-hereditary institutional devices, the republican element. Hence, classic discussions in the American constitutional idiom often balance a popular or plebiscitary democratic principle with a representative or institutional republican one.

Thus far, the twentieth century has been a grand time for the democratic principle. The direct primary, the direct election of senators, the vote for women and eighteen-year-olds, the enfranchising of southern blacks, the referendum, the initiative, the recall, the reapportionment of all state legislatures in accordance with the one-person, one-vote standard of *Baker v. Carr*—all these give evidence of the valuable contribution made by the democratic strand in our politics, and they have so taken hold of the popular imagination that the institutional arrangements needed to complement and countervail them sometimes seem "illegitimate," "anti-democratic," "elitist," or "oligarchic." Even the way we talk about political parties begins from the democratic premise. We start with election returns, turnout results, polling figures—that is, we begin with where the people are and then talk about adapting institutional requirements to the public will. The tools of the social scientist and poll-taker give this approach rigor and mathematical precision. The ministrations of the journalist lend it drama and flair.

A republican sensibility suggests a different kind of analysis. Instead of beginning with survey data and election returns, a republican approach treats these as after-the-fact consequences of party

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structure and leadership. Instead of beginning with where the people are, it looks first at what the institutions require and then sees whether citizens have the "republican virtue" to measure up. Instead of taking the findings of empirical social science at face value, it uses them to inform the "deliberative rhetoric" employed in statecraft and examined in political philosophy. It assumes that to impose institutional discipline upon popular will is not "illegitimate" but constitutive of legitimacy, not "elitist" but a necessary good, the indispensable condition for ordered freedom in a democracy. And it values most a journalism that discerns the enduring constitutional issues underlying day-to-day shifts in public policy and opinion.

Political parties are not, of course, the only institutions that can benefit from a republican style of thinking. Many other publicly chartered bodies have been neglecting their distinctive competences in an attempt to cater to imagined popular demand. The legislative branch likes to administer programs, the executive branch to legislate them, the judicial branch has felt compelled to do both; corporations want to editorialize, editors to manage; universities to be adjunct staff to business, journalism, and government; religious bodies to be auxiliaries to political parties. In every institution, leaders win inordinate applause for straying from their main responsibilities. A republican perspective will remind them that each institution works best when it minds its own knitting and allows some of its weaknesses to be corrected by the complementary excellences of other institutions.

Van Buren: father of the party system

For the parties, an attention to fundamentals is especially important. Walter Dean Burnham of M.I.T. has put the problem forcefully: "The traditional American political party, as such, is defunct." Unfortunately, the institutional arrangements that are emerging in its place do not yet embody the constitutional requirements for a party system. These requirements were developed by, among others, Martin Van Buren, who might be called the "founding father" of the national party system. The principles implicit in his writings and actions are now constitutional with a small "c," in the British sense of having become established practices of our manner of doing politics.

Our written Constitution, of course, makes no mention of parties. Indeed, the authors of that document often railed against the "spirit of party" and the "mischiefs of faction." They used the terms "fac-

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tion" and "party" interchangeably and pejoratively. In their view —and having masterminded a successful revolution they knew whereof they spoke—the mischief of faction lay in the subversion of procedure, truth, and decency in the pursuit of power for its own sake.

They designed the Constitution to foil an all-consuming partisanship: The provisions for a separation of powers, the extended federal structure, the indirect election of the President by electors of the states, and the shrewd phasing of elections and terms of office, were seen as a guard against any single organized faction seizing the apparatus of the government. To make any major change in policy, the branches of government would have to do so (as Montesquieu put it) "in concert." And even concerted activity at the federal level would leave opposition with local strongholds in the several states.

The Constitution was thus set up to thwart the purely strategic pursuit of victory. It was meant to enforce a spirit of indirection: to make persuasion rather than incitement the dominant mode of public discourse, the lawyer rather than the thug the typical American leader, the quest for office rather than the direct acquisition of power the focus of political ambition.

To extend this moderating spirit to the emerging party system was the work of Martin Van Buren, the first President to be born an American citizen and the first (as if to point a moral) to have made his way as a thoroughgoing "machine politician," up rungs now well worn, from county official to state legislator, to state attorney general, to U.S. Senator, to Governor of New York, to Secretary of State, to Vice President under Jackson, to eighth President of the United States. A principal architect of the Democratic Party, Van Buren was of the successor generation to the Framers. Like many of them he was a consummate practitioner of strategy who used his art to preempt the ground from a purely strategic politics. His intellectual contribution was to distinguish "party," as a broadly integrative institution, from "faction," which he used in the old pejorative sense.

To rise above faction, as he saw it, political parties had to structure themselves to embody the more inclusive principles of the regime. Since sectionalism was a looming problem, Van Buren insisted that a national party be structured around the northern and southern elements that would stave off divisive conflict. He, in fact, made this argument explicitly to the Jeffersonian Republicans of the South about the need to form what would become the National Democratic Party. In a letter of January 13, 1827 to Thomas Ritchie

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of Virginia, he deplored the attenuation of party spirit engineered by Monroe, for if "the old [party feelings] are suppressed, geographical divisions founded on local interests or, what is worse, prejudices between free and slaveholding states, will inevitably take their place." He supported Andrew Jackson, a border-state general with a moderate number of slaves, not as a non-partisan national hero but as a potential partisan leader who might give charismatic force to the principle of sectional integration.

The popular Jackson also fulfilled a second standard essential to Van Buren's idea of the American party system: that it channel new demands for democratic participation without disrupting the republican integrity of legislation and adjudication. There is a talmudic expression that captures this idea: Parties were to serve as a "fence around the Law." They were to provide a mediation of popular pressures exterior to the executive and legislative branches, which are, in turn, a "fence" around the Supreme Court and the Constitution. The national party system of Van Buren's time arose in response to universal manhood suffrage, the result of the lifting of the property qualification for voting during the 1820's. The national parties, with their elaborate caucuses, conventions, and rituals, gave scope to the democratic pressures of unpropertied voters while preserving the stability and decorum of representative government in the constituted branches. Under Jackson, the democratic "mob" invaded the White House for the inauguration, but when they went home, the republican institutions operated pretty much as before. With respect to the election of President, the new nominating conventions took up the role of preselection and vetting of candidates originally intended by the Framers for the electoral college. They were founded in a faith in the *democratic* spirit tempered by *republican* statecraft.

A third standard essential to Van Buren's idea of a national party is that it be effective in protecting individual citizens against corporate interest. The "money power," as Van Buren called it, would always prefer weak parties that can neither discipline nor oppose corporate interests. Only with the loyalty of a mass of individual citizens could parties provide a check on the selfish projects of the interest groups of the day. To maintain the necessary loyalty, they would have to command resources of patronage and communication sufficient to give them some independence from even their own large financial contributors. This was not easy, for, as Van Buren put it in a posthumously published work,

> aggregations of wealth and influence, connected as they are, or soon

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> become, with social distinctions, naturally come to be regarded as fountains of patronage by those who are in search of it. The press, men of letters, artists, and professional men of every denomination . . . are all brought within the scope of this influence.[1]

Thus, three constitutional principles underlying Van Buren's notion of party were that it be broadly integrative, that it channel and moderate participation, and that it impose upon particular interests the larger perspective of the public interest. These three principles elevated the purely strategic notion of faction to the constitutionally correct one of party. Adhering to them, politicians could pursue the age-old strategic goals of victory without endangering the regime.

As we all learn in school, Van Buren's vision of the Democratic Party broke down in the face of the slavery issue. But our education being more democratic than republican, we are rarely instructed in the institutional logic of the collapse, which confirmed Van Buren's underlying analysis even as it ended his career. The crucial measure was the reintroduction in 1844 of the two-thirds rule for the nomination of the presidential candidate. Normally a consensus device, the two-thirds requirement worked in the antebellum context to give prominence to the issue of slavery rather than to submerge it. It put the control of the convention with the most extreme third of the Democratic party—the "slave power"—rather than with the most moderate half.[2]

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[1] Martin Van Buren, *Inquiry into the Origin and Cause of Political Parties in the United States* (New York, 1867), p. 225.

[2] The two-thirds rule was specifically intended to block Van Buren's alliance of northern and southern Jeffersonians. For him, the key to bridging the slavery issue was a coalition that would accept slavery where it existed but would not extend it. His coalition could outposition both northern abolitionists and the more extreme southern interests, led by the brilliant Calhoun. Under majority rule, there would always be enough votes at a Democratic convention to assure an agrarian-based candidacy that would put economic and states' rights questions ahead of the divisive issue of slavery.

Unable to thwart this strategy directly, the slave interests, aided by war hawks and personal opponents of Van Buren, engineered at the 1844 convention a return to the two-thirds rule which had benefitted Van Buren's own vice-presidential candidacy at the first Democratic convention of 1832. By 1844, however, Van Buren's entire political calculus was predicated on majoritarianism, and the previous Democratic convention, though it had nominated him unanimously, had adopted majority rule. The reintroduction of the two-thirds rule not only blocked his nomination and likely election but permanently altered the balance of power within the ante-bellum Democratic Party. After 1844 no Democratic candidate could be nominated without agreeing in some form to the extension of slavery into the territories, a position increasingly intolerable to the party's northern constituents. The two-thirds rule thus substituted for the principle of sectional integration the iron logic of the sectional veto. It represented the belated victory of Calhoun. When in 1844 and 1845 the Baptist and Methodist denominations split into sectional conventions over slavery, there remained no institution outside the three constituted branches of government

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After 1844, the Democratic Party was structurally unable to deal with the issue of slavery, though, as always with quadrennial questions of party rules, the weakness took several conventions and the pressure of events to make itself fully felt. Whether the eventual split of the Democrats into northern and southern conventions and the war that followed were inevitable is not the question here. What is worth remarking is that, in any situation, politicians can seize on issues that will divide rather than unite. To maintain a polity requires Van Buren's brand of preemptive ingenuity. It takes a ruthless focus on process rather than outcomes to keep an adversarial system on terms that will bring people together even while they are competing.

For his mastery of this skill Martin Van Buren has gone down in our popular mythology as the Little Magician, a mere wire puller and manipulator—a "boss." He worked to preserve the kind of order in which his own abilities would seem contemptible.

It is a symptom of our own constitutional disarray that we must look to Van Buren with renewed respect and consider again the standards implicit in his hopes for the party system. For in the postwar period the twin forces of mass education and mass communication have produced a change in the American electorate fully as great as the introduction of universal manhood suffrage in the 1820's. They have spawned, as is often said, a "new class" of college-educated participants for whom principles and programs (as opposed to crass patronage) are paramount. To argue whether this energetic class is "liberal" or "conservative" is to miss the point entirely—the very prominence of those terms is itself a symptom of the pretentious yearnings of highly schooled but incompletely educated activists. What *is* important from a republican standpoint is to question whether the constitutional functions of party are being fulfilled in the changed circumstances.

Do political parties, as such, still exercise the integrative, channeling, and disciplining functions that Van Buren assigned to them? Do they have the resources of communication and patronage to be an effective brake on corporate power? Do the nominating conven-

equipped to mediate the issue.

The end of the Democratic Party as a mediating force came, in Van Buren's analysis, in 1857 when a Democratic President, James Buchanan, announced in advance that he would abide by an *obiter dictum* on the slavery issue by a Democratic-led Supreme Court in the Dred Scott case. Van Buren, who was still alive, saw immediately that passing the buck to the Court meant that all the fences around the law had been breached—the national party, the bicameral legislature, the executive. It was unrealistic and unrepublican to think the Supreme Court could dictate what politics could not mediate and religion could not transcend.

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tions still fill the role of a pre-electoral college? If not, have other institutions—notably the press, the civil service, and various corporate bodies—adequately taken up the funcions of party?

Democratic Party rules undermine deliberation

I have perhaps already prepared the reader for the sad news that a "republican" view of the parties requires some immersion in the intricacies of party rules. This is not an especially difficult topic, but to judge from the attention given it, a disagreeable one. Though literally thousands of journalists and academics find themselves commenting upon the parties and their conventions, I doubt that as many as a dozen have bothered to read the rules of both parties, master the way in which they discipline the intuitions of the political professionals, and observe how they reflect the very different histories and constituencies of the Republicans and Democrats.

Rules do not, as any social scientist will attest, have an empirically verifiable causal effect upon party character—any more than the First Amendment "causes" freedom of speech—but in a rule-of-law culture they are important indicators of deeper attitudes, which they both reflect and entrench. The great changes in party history—like the one that overthrew Van Burenism in 1844—are evident in the rules.

Ironically for the twentieth-century Democratic Party, a major shift can be dated from 1936 with the abolition of the "two-thirds rule." The very device that had been the instrument of an uncompromising South in the ante-bellum period was now wielded by a considerably more accommodating Dixie—a region which did not, for example, veto the nomination of a Roman Catholic in 1928. The two-thirds rule often resulted in conventions of many ballots. But it also assured a prebrokering of conflict and gave prominence to skills of compromise and indirection.

By 1936 majority rule was well understood to make possible northern control of the nomination process, and certainly F.D.R. must have seen its consequences if he were to break the two-term precedent. Because of its sectional implications, the dominant Roosevelt forces had to be discreet in pushing it through. As a sop to the South, they promised to introduce bonuses in delegate allocation that would reward one-party states for local Democratic strength. Majority rule was gavelled through on a voice vote in 1936, but subsequent conventions reneged on the pledge of pro-southern bonuses, ignoring signed petitions from southern delegations. Only in 1956 were the promised bonuses introduced, when Eisenhower's

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popularity in the South had at once reduced that region's share of them and underlined to the Democrats the need for fairer treatment of Dixie.

Southern Democrats retained a more potent power base outside the presidential convention by virtue of their Congressional committee seniority. But in the 1960's this base also began to erode: First, there was a concerted attack on the seniority system by some northern Democrats and their academic allies, then an abatement of the attack as Senators and Representatives from the Deep North began to replace southerners in leadership positions. The predictable response of Southern establishments was to flirt with the Republicans, whose own structure and history made for an unusually slow and awkward courtship. The result has been the uneven emergence of a two-party South, a development that was not simply a product of the racial issue (as is sometimes alleged) but of a prudent response by southern establishments to an assault by certain northern Democrats upon the founding ethos of their party.

As a party set up to embrace disparate factions, the Democrats have always had special need of procedures to enforce consultation. Yet their reforms since 1936 have pushed them in just the opposite direction. In revulsion first against the smoke-filled room, and then against the defenders of the Vietnam War, they have embraced primaries, quotas, and finally (in an effort to undercut George Wallace) closed primaries and proportional representation with mechanically bound delegates. The effect has been the demise not just of corrupt practices and the "solid South" but of the convention itself as a deliberative instrument.

The Democratic Party has, in sum, become too mechanically plebiscitary either to continue its historic role of brokering ethnic and sectional interests or to embark on a new role aimed at the middle-class American as citizen. In the space of forty-five years, the Democrats have moved from brokered conventions run by political professionals to the "open convention" influenced by news media professionals whose metier does not entail any continuing responsibility for the health of either party. Obviously, they cannot bring back the days of Martin Van Buren or even of Richard Daley, but their very survival as a viable national party may well depend on reestablishing a measure of political control over the nomination process.

Recent court decisions and the little-noted republican potential of the McGovern-Fraser reforms give them the procedural power to do so. Since 1972, the Democrats have had a fully representative

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National Committee empowered to hold mid-term conventions and to rewrite party rules. And under last year's Supreme Court ruling in *Democratic Party v. LaFollette*, the party rules they draft can supersede state laws for delegate selection. The Democrats are thus able to revise thoroughly their own structure and, since the Republican National Committee has no power for interim rule-making, to set the fashion in state legislatures under which GOP candidates will also compete.

In principle, the leisure to rewrite the rules in mid-term might be thought to encourage a constitutional perspective; in practice, it gives greater scope to the very factional rivalries that have undermined party health in the first place. When the rules are changed two years before a contested convention, bargaining between the leading presidential aspirants is almost certain to have greater weight than any long-term considerations of party integrity.

Still, the opportunity for mid-term restructuring in 1982 has led former Governor Terry Sanford of North Carolina to propose a coherent balancing of democratic and republican elements in the nominating process.[3] He suggests that delegates be elected on a district basis with only those pledges of loyalty they may see fit to make in their campaigns. Direct preferential primaries would also be held, but they would be advisory only. The preferential primaries would give scope to the democratic principle and to the role of media politics. The manner of delegate selection would introduce a republican counterweight: It would permit a deliberative convention in the event no single candidate were to stampede public opinion in the primaries.

Though the Democrats seem prepared to find some means to repoliticize the nominating convention, one should not overrate the changes of Sanford's proposal or of others grounded in the Amer-

[3] See Terry Sanford, *A Danger of Democracy* (Westview Press, 1981). Sanford's proposal is not free from disabling practical difficulties (a similar system now causes some confusion in New York State). But for purposes of discussion it has the advantage of being comprehensive, in print, and posing clearly the republican and democratic elements. On the GOP side, there is an equally comprehensive proposal first introduced as a bill in 1972 by Senator Robert Packwood of Oregon. It would group primaries regionally for the convenience of the news media and the candidates (thereby also raising the entry costs for an unknown candidate). As its republican feature, it would reserve 35 percent of each state delegation to be selected by the state party organizations independently of the primaries. For a consciously republican discussion of the problem in terms of the intentions of the framers see James W. Ceasar, *Presidential Selection: Theory and Development* (Princeton: Princeton University Press, 1979).

If the problem were only to enforce consultation rather than to develop a defensible scheme of representation, it might suffice to reintroduce the two-thirds rule for two ballots, a course proposed to the Democrats by Curtis B. Gans, a former member of the Democratic National Policy Council.

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ican constitutional idiom. Such proposals run exactly counter to the plebiscitary rush of the party and the press in the past half-century. They are compatible with a smaller, more manageable convention—hardly the fashion in either party. They allow delegates to be elected as people rather than as digits in a sexual, racial, or (in the latest fad for *ex officio* delegates) occupational quota scheme. And they require a reasoned balancing of elements unlikely to emerge from a large committee, where the natural pressure is to add a patchwork of options and gimmicks onto a process that already mystifies the party's constituents. The aggregated acumen of the "new politics," in short, weighs heavily against any coherent proposals. To paraphrase the memorable words of a Republican orator: "If Martin Van Buren were alive today, he'd be turning over in his grave."

Discrimination in Republican Party rules

Ditto for Abraham Lincoln (about whom Gerald Ford once intoned that lament). For whereas compromise was the founding principle of the Democratic Party, equality of the individual before the law was that of the GOP. Indeed, in its first sixty years the Republican Party followed the strict view that party conventions are pre-selection devices fulfilling the Constitutional role originally assigned in Article II to the electors in each state. It therefore based its delegate allocation formula on a purely electoral college standard. Each state's delegation was a multiple of its electoral college strength.

This straightforward system first fell victim to the factional rivalry between Ohio and New York. To avenge the manipulation of southern delegations by the "Taft steamroller" in 1912, the New York faction, as a condition for returning to the party after the Bull Moose bolt of 1912, insisted on cutting southern representation by a third. A rebirth in sectionalism was accomplished with the introduction in 1916 of a Congressional district bonus system (previously rejected in 1908 and withdrawn by a Pennsylvania sponsor in 1900) which denied a delegate to any district giving the GOP presidential candidate fewer than 1000 votes. The minimum vote was raised substantially in 1924 and again in 1940. Since the bonus was (accurately) perceived as anti-southern, it inhibited GOP appeal in that region during the very decades when the Democrats were systematically reducing the role of the South in party councils. Only in 1972, when Republicans were persuaded of the offense it had given to an otherwise hospitable Dixie, was the Congressional district bonus abolished.

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A more lasting rebirth in ethnic and religious prejudice came in 1924, when the party adopted a wholly unprecedented "uniform victory bonus" primarily aimed at weakening representation from areas of non-Protestant and non-Nordic settlement. In 1980, a history of the GOP rules was presented in testimony to the Convention Rules Committee, tracing the origins of the 1924 "uniform victory bonus" to the nativist climate of the early 1920's. It suggested that the bonus system adopted by the Republican convention of 1924 was "part and parcel of the same kind of thinking" that produced the National Origins Immigration Quota of the same year.

The new GOP rule, indeed, was implicitly aimed at locking in a given ethnic and religious balance in the party. It awarded three "uniform victory bonus" delegates to every state delivering its electoral vote to the presidential ticket in the previous election. Since the bonus was awarded without regard to population, it skewed the convention toward the small western states, which also happened to be the most favored in ethnic and religious purity. In 1940 this bonus was doubled to six delegates while the anti-southern provisions of 1916 were also tightened. Uniform victory bonus provisions for the Republican National Committee were added in a roll-call vote in 1952, over the objections of southern and industrial states alike, and remained until the 1968 convention. In 1972, after the 1924 bonus suffered initial reverses in court, a victory bonus proportionate to electoral college votes was added to protect the uniform bonus from further legal challenge.

Equally discriminatory provisions were used within the delegations of the large states to underrepresent the more populous (and polyglot) urban counties, and even within counties to underrepresent the more populous precincts. Though most of these county-unit and precinct-unit systems have been reformed or litigated out of existence at the state level, a measure to introduce a new layer of uniform bonuses was recommended by the Republican National Committee (RNC) as late as 1980, and only narrowly voted down by the Convention Rules Committee.

The popularity of uniform bonuses at the RNC and on convention committees is by now a product not of prejudice but of the confederal ethos of those bodies. On the RNC and on the Convention Rules, Credentials, and Platform Committees, all states have equal voting power ("just like the U.S. Senate," the rationale now runs). A gag rule at GOP conventions provides that a measure must have 25 percent minority support on a committee to be reported onto the floor. The ten largest states put together—with a majority of the

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U.S. population and just under a majority of the electoral college vote—cannot muster even 20 percent of the vote on a convention committee, while the thirteen most sparsely populated states of the Plains and West, with a combined population of about three-fourths that of New York, have little trouble accumulating decisive strength. Though there is another rarely used device for getting minority positions on the floor, the 25 percent gag rule explains why issues of middling interest to the less populous states are routinely included in the GOP platform so as not to risk a floor fight, while similar concerns of densely settled areas are omitted altogether. (Compare, for example, the easy success in the 1980 platform of a measure to repeal the 55 mile-per-hour speed limit with the inattention to such issues as pollution, chemical waste disposal, and mass transit.)

The democratic lobe of the national brain resists the idea that technical rules, set without fanfare by a small group of specialists, should shape the whole character of a major party. Yet such is undeniably the case. Everett Carll Ladd, Jr., of the Roper Center, has demonstrated that long-time Republican loyalists—leaving aside the more volatile identifiers who flock to the party under popular presidents like Eisenhower, the Nixon of 1972, and the Reagan of 1980—are precisely what one would expect from the rules: northern, Protestant, non-urban whites.

Especially striking has been the Catholic-Protestant division between the two parties in the north. Prior to the 1980 conventions, Ladd compiled statistics for *Public Opinion*, the quarterly of the American Enterprise Institute, comparing non-southern business and professional voters by religion. Though the GOP is commonly thought to be the party of these more affluent voters, it commands the loyalty of the majority of Protestants only. Roman Catholic business and professional voters were more likely to identify with the Democrats than their Protestant coworkers were to identify with the GOP. They were also more likely to be Democrats than were Protestant manual workers. In demographic terms, religion was a more reliable predictor of party affiliation than was occupation.

By now, the discriminatory effects of the GOP rules are viewed as entitlements by those who benefit from them. The large number of bonus delegates (about 25 percent of the next convention)[4] is

[4] About half of these will be from the uniform victory bonus and half from a new 1972 victory bonus proportioned to electoral college strength. The maximum proportion of victory bonus delegates is now almost one-third (19 percent uniform, 13 percent electoral college). In 1924 the maximum was 12 percent, along with 45 percent congressional district bonus delegates, for which almost all northern districts qualified. In 1940 the maximum uniform victory bonus percentage was raised to 21 percent.

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now said to reflect the hallowed Republican principle of "incentives" (as if state party organizations were still the major factor in national campaign strategy); the confederal structure of all national GOP committees is sometimes defended as a model of "federalism"; and court decisions giving the parties broad authority to set their rules are cited as endorsements of the 1924 bonus system.

But like most reasoning about party rules in this century, the underlying logic has been more factional than constitutional. In 1972 when the convention, spurred by a short-lived federal court injunction, rewrote its allocation formula to preserve the 1924 bonus from legal challenge, the faction that spearheaded the move was looking not to the spirit of Article II of the Constitution but to the delegate count at the next convention. With Ronald Reagan as their main speaker, "conservatives" correctly estimated that the uniform victory bonus would be worth well over 100 delegates to their next standard-bearer—just enough, as it turned out, to bring Governor Reagan's faltering 1976 candidacy to the roll-call vote that launched him on his successful 1980 campaign. With an instinct worthy of the F.D.R. forces of 1936, they also understood the need to provide a sop to the "moderate" (i.e., heavily Catholic and Jewish) states that opposed the bonus system in a rare roll-call vote; hence, they adopted a new preamble with rhetoric as lofty as it was unfulfilled:

> It is the intent and purpose of these rules to encourage the broadest possible participation of all voters in Republican Party activities at all levels and to assure that . . . we are also the party of opportunity for all; opportunity for everyone of every race, religion, color, national origin, age or sex . . . for minorities and heritage groups, and for all Americans . . . in all sections of the country, North, South, East, and West.

The spirit of the preamble may have some delayed effect. In 1980, confronted with evidence of the discriminatory effect and intent of the bonus system, the Convention Rules Committee voted down proposals to add new uniform bonus delegates and instructed the Republican National Committee to prepare a fresh study of the problem of delegate allocation for 1984.

The institutional competitors of party

The distinctive incompetences of the two parties are perhaps best captured in their national committees, both of which have undergone considerable "reform" in the past decade. At the RNC the reforms have been impressively managerial: the construction of the

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most technologically advanced, centralized, top-down fundraising, polling, consulting, and campaign services operation of any party in the free world. Juridically, however, the RNC remains a pristine confederal body with three votes per state. Among the voting members are very few from the groups excluded in the 1920's. To remedy this in the 1970's, the RNC hired "minority consultants" to practice "outreach" and (in a truly quaint touch) reserved non-voting seats on its executive committee for representatives of Hispanic, black, and "heritage" (mostly ethnic Catholic with a few Asians) auxiliaries.

The DNC, by contrast, is a model of broad representation. But it seems capable of managing nothing save its own rules and bylaws, and the landmark litigation they occasion. The main campaign service it has provided to state and local parties is the provision of ukases requiring "compliance" with the latest fashions in policy and structure. A measure of its power may be seen in the narrow loss in 1981 of an off-year Congressional seat by an Ohio Democrat who was anathematized by Central Headquarters for his failure to support the Equal Rights Amendment.

A cheerful view would have it that the parties are so much the mirror image of each other that their foibles cancel each other out —that the clubbish managerialism of the RNC is complemented by the incompetent populism of the DNC, that the groups targeted for underrepresentation in the GOP convention are given ample voice in the Democratic one. Whichever party is more inept, one may be comforted to think, will lose elections; a self-correcting "realignment" will occur to reequilibrate partisan politics in much the same way as the invisible hand does the trick in the free market of economic theorizing.

But this happy theory, aside from ignoring the factional dynamic that routinely disrupts the market mechanism within each party, suffers from a great twentieth-century error in discussing partisan affairs: namely, treating the two parties as competing only with each other. Taken together, they are in a more enduring constitutional balance with other institutions, notably the press, the civil service and, on another level, with what Van Buren piquantly called "the money power."

So, while it is superficially true in the short-term that the weaknesses of one party provide tactical opportunities to the other (which it often fails to exploit), it is more deeply true that over the long term the weaknesses of both parties provide strategic opportunities to non-partisan institutions (which usually are not slow to respond).

During Watergate, for example, there was an immediate and

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well-publicized electoral "realignment" towards the Democrats; much less remarked upon was the enduring gain by the career civil service, members of which were leaking most of the damaging information to the press. Both the CIA and FBI directorships passed into career hands during this period, and Gerald Ford, who had been in Washington politics for 25 years, was "cleared" for the vice-presidency only after a full-field FBI check. One lasting legacy of this period is the presumption in favor of career Foreign Service officers as ambassadors.

Our eighteenth-century forbearers had a word for such developments: "encroachment." Following their insights we have all been taught to see the executive, legislative, and judicial branches as acting properly when they check and balance each other and improperly when they usurp, encroach upon, or share another branch's distinctive functions. But no similar common sense yet exists about the *secondary* constitutional balance that has grown up among party, press, and civil service. Yet in this tripartite balance, the constitutional changes have been at least as far-reaching as those asserted to exist for the "rise of the Imperial Presidency" or (from another point of view) of the "Guardian Supreme Court."

In the century since the passage of the Pendleton Act there has been a steady rise in the role of civil service appointments at the expense of party spoils. This movement is now canonized with the establishment of professional academies for civil servants at Harvard, Yale, and Princeton, among others. The American civil service is not yet as respected as the British, or as self-confident as the French, but it is lumbering in that general direction. By rotation and osmosis its ethos has spread to the career element in the elective system, the Congressional staff bureaucracy.

Our journalists, too, are on the well-paved road to professionalism and bureaucratization. Once a romantic and disheveled band, they now occupy well-defined niches. With respect to the political parties, their position has improved greatly since the days of Van Buren, when the best thing that could happen to a Washington newspaper was to be designated official administration spokesman (and the recipient of federal notices). The first independent sallying forth was by *New York Tribune* editor Horace Greeley in the inept Liberal Republican campaign of 1872. By 1940, however, independently powerful elements of the press were crucial in the Republican nomination victory of Wendell Willkie, and this was a harbinger of more pervasive influence exercised in the age of centralized network television. John Adams saw very early that our

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politics would be more roiled by competition for honors than for wealth. As independent arbiters of honor, members of the press now sit among the elders of the land.

If one wishes to be an impractical troubador in public life, the only way left, it appears, is to run for office. For here one's only institutional safety net, other than personal wealth, is the enfeebled political party. Once a dominant institution, party has for a century been in such steady retreat before press and civil service that what seemed in Van Buren's day the minimal conditions to party success—direct control of patronage and communication—are now missing from the national partisan equation. Even the televised presidential "debates," the most powerful modern innovation in partisan communication, are in fact joint press conferences in which the national agenda is defined not by the politicians but by the reporters, who even-handedly pose parallel questions to both candidates.

Either to lament or to applaud such developments is beside the point. They are by now part of the constitutional landscape. Few Americans would prefer a civil service (like that of Austria) over which the two parties divide control, or a press (like that of Israel) in which major newspapers receive party subsidies. And no one wants to bring back the Postmaster General as party leader. As a matter of republican prudence, however, there is a limit to how far the parties, as institutions, should be allowed to decline; or to put the problem more pointedly, how far we should allow their decline to be masked from us by those who benefit from it.

For the weaker the parties become, the more elaborate deference is paid to them by the press and civil service—much as the Prime Minister of a constitutional monarchy bows ever so deeply before the powerless royal family. Exaggerated talk of "realignment" is one way of bending the knee, since the loyalties being realigned are by now so shallow as to be at the mercy of those who influence the interpretation of day-to-day events. Exaggerated talk about the momentousness of each new partisan initiative (e.g. "the greatest tax cut in American history" for a reduction in the rate of tax increase) also sets elected leaders up for a fall.

That the politicians themselves are often willing accomplices in the ballyhoo that undermines them is a symptom not of stupidity, but of misdirected cleverness. Alert to the outpositioning of partisan opponents but obtuse to deeper constitutional movements, more avid for applause than for lasting political authority, "popular" political leaders also have accelerated the decline of the parties as institutions. Their habits culminate in the replacement of party by per-

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sonality and of long-term partisan coalitions with evanescent personal followings.

Party is not, after all, a product of charisma but of the routinization of charisma, and the most determined party-builders are generally politicians who know that they cannot rely on personal appeal. It was the unattractive Van Buren, not the heroic Jackson, who built the "Jacksonian" Democratic Party. And in our own day, no one was more solicitous of the Republican Party than Richard Nixon (before he thought he might become a leader in the grand style). Parties serve, among other functions, to control the excesses of personal leadership.

The "decline of party" does not consist, then, in any diminution of the robust factionalism that has always marked American politics, but in the opportunity such factionalism has provided to encroachment. The politicians who now recognize the broader constitutional trend do so obliquely by complaining about the "media" and the "bureaucracy," as if running down other institutions were a substitute for the intelligent reshaping of their own. And while it is true that the press and civil service have not yet faced up to their enhanced political role, the disarray of the partisan system is more disturbing. For parties alone serve as channels to elective office, the ultimate source of political authority in a democratic republic.

The "middle distance" and the politics of mortmain

Moreover, as Van Buren was the first to see, the parties are the only effective institutional means of disciplining the "money power" over the long haul. Their competence in this derives not from their total abstinence from the mother's milk of politics but from their dependence upon it. Partisan leaders know what it means to be bought, suborned, influenced, pressured, blackmailed, and honestly persuaded. They understand the play of interests not as a sin or as a sociological abstraction but as an everyday fact of life. They grasp quickly the difference between a principle and an expedient, even when they choose to be expedient. And though the courthouse politics of one-party districts still presents the most unsavory examples of the abuse of power, two-party politics at the national level now has a remarkable civility. Conducted in the open, it is, as we can all observe, not worse behaved than the Kremlinesque struggles of boardrooms, Pentagon corridors, and faculty departmental meetings. The most brutal infighters in Washington these days were trained in these latter arenas, not in the more civil discipline of seeking elective office.

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The focus of parties upon elections accustoms them to look toward the middle distance, where the interplay of pressure groups touches people's lives. Politicians must stand for office at the two to six year intervals in which mature Americans make such decisions as changing residences, buying cars, renovating kitchens, enrolling children in schools, upgrading skills, seeking promotions, breeding cattle, and planting apple trees. The fallibility of this focus is well known, but it does correspond with some of the more comprehensible rhythms of American life. Journalists necessarily focus on a shorter time horizon, civil servants on a longer one, so that politics conducted between press and civil service alone would alternate between transient enthusiasm and established principle, between panic and eternity.

Parties still provide the necessary cartilage in our politics. One can imagine elections conducted without organized parties, as in the local politics of nonpartisan and single-party districts. And one can also broaden the notion of party to include whatever floating coalitions of cadres happen to assemble for electioneering purposes. But at the presidential level the inevitability of a two-party system is written into the basic law. As Aristotle was the first to observe—and the architects of the French Fifth Republic have acted on his insight—any preselection device that ultimately narrows the elective field to two candidates and decides between them by majority rule encourages the formation of parties. The American electoral college system, as laid down in Article II and subsequently amended, is what gives us our two-party politics.

Because of their inevitability under current Constitutional arrangements, the two major national parties have been the beneficiaries in the past decade of protective legislation limiting the size of contributions, subsidizing the national conventions, providing federal funding of both primary and general election campaigns, and giving party organizations a privileged position over individual candidates in accepting large contributions. Yet these innovations alone do not suffice to make parties, or even the elective system as a whole, an adequate brake upon vested interests. For though elected officials can, if they choose, resist the pressure of "single-issue groups" when they are explicitly so labelled, open lobbying is a very small part of the "money power," properly understood.

The more established the interest, the more likely it is to deal with the enduring infrastructure in the press, the civil service, or the Congressional staff bureaucracy. Certainly, one does not find executives from the major banks, universities, or oil companies at party

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platform hearings. They make their voices heard in quieter ways, occasionally by rotating a dispensable executive into an under-secretaryship. Political parties are for little people who have no other voice. The stewards of really massive concerns must budget their time carefully; they cannot, except *in extremis*, dally with mere politicians, unless it be a Speaker or a Chairman or a President. Their influence, when successfully exercised, confronts and corrupts no one. Nor need it show up on lists of campaign contributors. It simply wafts through public opinion as an irresistible wind of change, with elected officials acting as windsocks.

In one sense, this is as it should be. Our form of politics is not meant to revolutionize society with each new election but to adapt a reasonably stable framework to the felt needs of the day. A problem does arise, however, when the sole custodians of the longer-term framework are managers of large institutional interests. For whether these interests be profit-making corporations, non-profit organizations, or public agencies, they share one defining mark: They pursue abstract, long-term goals detached from the life cycles of individuals, families, and communities. They are, in fact, given special immunities by law that both encourage and require them to be impersonal. Their estrangement from the ordinary rhythms and aspirations of human life is captured in an old Common Law term, originally applied to church property: "mortmain" or the "dead hand" of property rights exercised in perpetuity.

There are many arguments, practical as well as juridical, for allowing artificial legal personae to be equal subjects before the law and yet to have special status with regard to death and taxes. But there is no valid argument for allowing the politics of mortmain to displace the politics of human beings. Yet minds practiced in an urbane merriment at the fallacies of invisible-hand reasoning in the marketplace blithely accept an even more pollyannaish theory in which the interests of citizens are guarded by the "countervailing powers" of big business, big government, and big labor, as if a battle among the elephants guaranteed the safety of the ants.

Martin Van Buren, informed by an abiding hatred of Whig banking interests, had a sounder grasp of reality. He saw that the only corporate entity founded upon the fact of citizenship itself is the mass political party. Labor unions may now represent wage-earners, companies shareholders, universities the advancement of learning, but such corporate missions permit, at best, only a truncated view of citizenship. Yes, managers of large organizations are also citizens, often good ones, and it is to be expected that they will support civic

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causes and moderate their institutional strategies to accord with broader public concerns. But the cold fact remains that in a world of large institutions the only one that has direct citizen participation at its core is the political party. And the low regard in which parties are held is a danger signal pointing to the absorption of the politics of citizenship in a calculus of cross-cutting corporate pressures.

One can imagine a system in which the absorption becomes complete: an administered syndicalism carried out among representatives of large material interests, a polity stressing goals of meeting creature comforts, raising per-capita income, and keeping inflation, unemployment, income distribution, and the level of taxes within certain statistical guidelines. And those intellectuals adept at making a benign managerialism seem edifying would then be admired as the most insightful and profound.[5]

Political parties would be peripheral in such a system. For when citizens are content with a politics of economic distribution pursued through corporate groups, they have, in effect, rejected the party as a channel for direct participation; whence Van Buren's insight that the complacently prosperous prefer weak parties. More accurately, they prefer the corporation to the party as a mediating structure.

The imperatives of reform in both parties

The point I am making is neither nostalgic nor left-wing. It is simply to note that the institutional preconditions for effective citizen politics are lacking at the national level. That much is nothing new. American parties never did have a national apparatus; they merely drew together local networks of patronage and organization. What has changed in the past three decades is that America has developed fully national (and often international) professions, unions, industries, markets, news media, and managerial elites. If the parties do not also embrace the national idea, it is hard to see how elected officials can sustain an independent role *vis à vis* the press and civil service on one level, and the money power on another.

To be effective national bodies, American political parties do not have to become monolithic, ideological, or overly centralized. But they will have to get serious. They will have to allow deeper constitutional considerations to restrain the crasser factional motives. To

[5] On these grounds Mr. Felix Rohatyn ranks as a major sage for his advocacy, in a series of articles in 1981 and 1982 in the *New York Review of Books*, of extending to the national level the expedients under which New York City went into disguised receivership.

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do so they will need friendly criticism from outside the party establishments, for the clear lesson of history is that within party politics cynicism pays. Because of the quadrennial interval between conventions, the most blatant factional maneuver (dressed up, of course, in lofty rhetoric) has always "worked." Its perpetrators have had the advantage of it four and eight years later, while the deeper constitutional effects have taken several conventions to play out.

Thanks to the Democrats, the dénouement has now quickened. By setting up a midterm convention and interim rule-making authority, Democratic reformers have opened questions of party structure to extended public scrutiny. Since they have also seized thereby the initiative for shaping the state primary laws under which GOP candidates must also compete, their deliberations are of more than internal interest.

At the moment, the agenda of the dominant Democratic factions happens to coincide with the commercial instincts of the television networks. The better known candidates, Kennedy and Mondale, share with the media a desire to shorten the campaign season into a gripping mini-series, with a familiar cast of characters. By grouping primaries, eliminating or moving up the early Iowa caucuses and the traditional New Hampshire vote, and introducing Senators and Congressmen as *ex officio* delegates, the party would, so the argument goes, reduce the "cost" and "confusion" of presidential competition. For the networks, the presence of familiar Washington faces would make the work of television interviewers easier; shortening the campaign season would, for its part, countermand the effect of a recent decision of the Supreme Court that deprived television executives of the right to refuse early (and unprofitable) partisan advertising. As for the Kennedy-Mondale establishment, a media-oriented nomination has the advantage of raising the entry costs for insurgent candidates.

On the Republican side, a "less costly" nomination campaign also has a well-heeled constituency. Leaving aside the obvious interest of visible federal office-holders in a Washington-centered process, the GOP leadership senses a real insurgent threat from the "new right." Because the Republican primary constituency is small and aged, it is vulnerable to any well-organized grassroots movement. The last such movement was the Goldwater insurgency, which began in the late 1950's and claimed a significant minority presence at the 1960 convention. By all available indices, the new right forces were stronger in 1980 than the Goldwater conservatives were twenty years earlier. Open attacks on the new right by the Goldwater vet-

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erans who now control the national Republican apparatus show that they are acutely aware of their own vulnerability. By allying themselves with GOP moderates and moving nomination politics away from the grassroots, they might hope to put the new right at a disadvantage.

Yet whatever one's view of network television executives or of the current leadership in the two major parties, grandfathering them in is not a sufficient ground for reform of the nomination process. In America, mass parties were set up to channel participation of unpropertied voters. They have a special importance now that even the wealthy among us are relatively unpropertied when compared to large corporate institutions. A nomination process that removes the presidency from grassroots pressures and underfinanced insurgents in effect fragments the one office most responsible to the American people as citizens. It disciplines presidential aspirants to curry the favor of calculable and organized interests and to ignore latent citizen concerns. It moves us from an ideology of civism to one of corporatism. And by raising the entry costs within two-party competition, it encourages independent and third party candidacies.

A more fruitful approach to reform would begin with the most serious structural infirmities of the two major parties themselves. For the Republicans the problem, as we have seen, is a very simple one of living up to the party preamble. The use of victory bonuses in the GOP has always had an invidiously discriminatory effect against residents of densely settled areas, and the historical evidence suggests that there was discriminatory intent. Indeed, the "threat" of the new right comes in no small part from its mobilizing Roman Catholic and Southern Baptist activists who were, and in many cases still are, systematically discouraged from participation in GOP politics by nativist and anti-southern bonus devices. An equitable allocation of convention delegates will be a sign that the GOP, as a party, is taking seriously its commitment to equality of opportunity. A similar sign for the Republican National Committee would involve broadening its confederal basis of representation to reflect the genuinely national managerial responsibilities that have accrued to it in the past decade.

For the Democrats, the most important issue is not the allocation of representation among the states but the basis of representation within each state. During the period of their preoccupation with George Wallace's strength in winner-take-all primaries and unit-rule caucus states, the Democrats committed themselves and the country to a system of proportional representation. Given three or

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four well-financed candidates and continuing regional variety in the party, a proportional system invites a deadlocked convention. The fact that a multi-ballot convention has not yet occurred does not alter the logic of the rules.

In the event of deadlock, it is especially important that there be, in Governor Sanford's phrase, "thinking delegates" who can exercise the deliberative functions originally assigned to the Electoral College. The wholesale infusion into the convention of *ex officio* federal and other elected officeholders may give the Democrats a savvier convention in 1984, but those who advocate this course on more than expedient grounds might ponder why Article II of the Constitution explicitly prohibited federal officeholders from serving in the electoral college. Was it the idea of the framers to have presidential selection carried out by electors whose minds were uncluttered by other ambitions?

Since the Democrats lack the relative homogeneity of the Republicans, inattention to the issues of representation could destroy them as a national presidential coalition. Given their diversity, moreover, they would be well-advised not to impose a single system on all state parties. In this, as well as in the managerial aspects of national committee affairs, they can take a few cues from the GOP. The Republicans, for their part, can learn from the experience of the Democrats in designing a broadly representative national committee structure to legitimate centralized managerial techniques. And both major parties may, in the next ten years, find themselves imitating devices pioneered outside the current two-party system. The presidential nominating convention itself, after all, was first used by the Anti-Masonic Party in 1831. If it fails in its traditional republican role as a fence around the law, demands will grow for direct democratic devices (a national primary?) or for a constitutional convention, as authorized in Article V.

In designing specific incremental remedies, there is a kind of inverse parallelism in measures that are appropriate to the two major parties. Each needs to go more against its own name: The Democratic Party needs to become more republican; the Republican Party needs to become more democratic. And both need to remember that though their structures are in some respects extra-legal, their responsibilities are, in a deeper sense, constitutional. Parties were once used to make sure that citizen pressures did not get out of hand. Now we may need them to make sure they are felt at all.

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The receding mirage of the balanced budget

ROBERT D. BEHN

GOVERNMENTAL budgeting used to be simple and straightforward. If Congress wanted an agency to spend some money for a particular purpose, it appropriated the amount it thought was required and told the agency how to spend it. If that money ran out before the end of the fiscal year, the agency might go back for more, but Congress would not be required to appropriate any. Indeed, it might be a little sore at the agency for spending too much.

It does not work that way any longer. Rather than giving an agency a specific amount of money for a specific program, Congress decides what types of people are eligible for what levels of benefits under that program. How much money is actually spent depends upon how many people apply and how much the benefits for each one costs. How much is spent on such programs each year also depends upon economic conditions such as inflation and unemployment, and how much we should budget for these programs next year depends upon what we think will happen to these economic factors. What we end up paying is not at all constrained by what number was used in the budget.

Until we actually have to make these payments, however, it is difficult to say what the correct budget number is—it all depends

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upon what type of economic conditions we forecast for the future. And therein lies the temptation. For if you forecast an expanding economy—with real economic growth, declining unemployment, declining inflation, and declining interest rates—it is quite easy to balance the federal budget. Not this year, perhaps, or next year either. But if you can conjure up three or four years of a constantly improving economy—presto—you have a balanced budget!

Increases in uncontrollable spending

A good example of how outlays are determined by past, present, and future economic conditions is provided by payments for interest on the national debt. In October 1981, the federal government's debt crossed the trillion dollar mark. This suggests that if interest rates are 10 percent, outlays for debt service would be $100 billion per year.[1] Further, if interest rates go up just one percentage point, the additional cost to the federal government would be $10 billion, and if they go up two percentage points, the additional annual cost is $20 billion. Compare that with President Reagan's original target deficit of $42.5 billion for fiscal year 1982 and you understand one reason why he has been so concerned that interest rates come down.

If Congress fails to appropriate enough funds to cover such increases in interest payments, that is just tough luck. The extra $10 billion or so has to be paid, and Congress simply has to come across with the necessary funds. Since federal revenues are "only" about $700 billion, Congress cannot get rid of the trillion dollar debt very quickly—even if it was willing to spend absolutely nothing next year on soldiers, cancer research, or food stamps. Consequently, even if Congress balances the federal budget, it still has to pay the annual debt service on a trillion dollar deficit, whether it wants to or not. How much it must pay is determined not by how much it appropriates but by the interest rates demanded by those willing to invest in federal securities.

Anyone who seeks to balance this federal budget also quickly discovers that three-quarters of federal outlays is what the Office of Management and Budget (OMB) calls "relatively uncontrollable." These outlays are difficult—if not impossible—to cut because "they

[1] Actually, federal outlays for interest are not quite as high as these back-of-the-envelope calculations suggest, though they do absorb 10 percent of federal outlays. One reason that outlays for interest are not $100 billion per year is that part of the federal debt was issued during an "ancient" financial era when interest rates were much lower than they have been for the past two years.

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are determined by existing statute or by contract or other obligations." Approximately 16 to 17 percent of the budget results from contracts or other obligations made by government agencies in previous years. Another 58 to 59 percent is for open-ended programs (such as Social Security) and fixed costs (such as interest). Of the remaining one-quarter of the federal budget which is "relatively controllable," nearly two-thirds goes for defense, which can be controllable technically but not politically.

Uncontrollable spending is not only uncontrollable, it also increases uncontrollably. Social security costs increase because of Congressional actions (expanding eligibility), demographic shifts (more people become eligible through retirement than become ineligible through death), and changes in economic conditions (such as an increasing inflation rate). Legislative increases are controllable and demographic shifts are usually predictable, but economic conditions are quite difficult to control or to predict.

Inflation, for example, affects outlays for a wide variety of programs. Half of all federal outlays provide benefits to individuals through such programs as Social Security, civil service retirement, veterans compensation, and Medicaid. Moreover, 30 percent of all outlays are for entitlement programs (including Social Security) that are explicitly indexed to inflation. And for each percentage point increase in the Consumer Price Index (CPI), outlays for these indexed programs increase by $1.9 billion.

Benefit payments for individuals from other programs are affected by inflation in different ways. Inflation causes hospital rates to increase, and thus payments for Medicaid and Medicare go up. Agricultural price support payments are indirectly linked to inflation. Some programs are *de facto* indexed. Although veterans pensions are indexed to the CPI through the Social Security formula, veterans compensation is not; nevertheless, in recent years, Congress has raised veterans compensation payments so that they increase as fast as they would if they were indexed. The Congressional Budget Office (CBO) estimates that a one percentage point increase in the inflation rate could (through formal indexing provisions of entitlement programs *plus* the continuation of past practices) cause all outlays to increase by more than $2.5 billion.

Other economic indicators are linked directly, if not legislatively, to outlays for specific programs. For example, benefits paid for unemployment compensation will rise and fall with the unemployment rate. When the Carter administration released its FY 1982 budget in January 1981, it predicted that federal outlays for unemployment

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compensation would decrease from $26.1 billion in FY 1981 to $21.9 billion in FY 1982. Outlays would decline, it said, because the average unemployment rate would drop from 7.8 percent in FY 1981 to 7.6 percent in FY 1982. The administration noted further that a one percentage point increase in the average unemployment rate for FY 1982 would increase outlays for unemployment compensation by $9 billion (in part because it would trigger extended benefits nationally), as well as increase outlays for other programs by an additional $1.5 billion. A decline of one percentage point would cause outlays for all programs to drop by "only" $5.5 billion, since this shift would not affect the national trigger. Thus, a small change in the unemployment rate (which jumped from an annual average of 5.8 percent in calendar year 1979 to 7.2 percent in 1980) can cause automatic, uncontrollable increases in federal outlays of billions of dollars.

The impact of forecasting errors

Interest rates, inflation, unemployment, wage rates and salary levels, and real economic growth all have uncontrollable effects on tax revenues and spending for various federal programs. Consequently, outlays for many programs are difficult to estimate, even just a year or two ahead of time. Such spending estimates can only be derived from economic forecasts—forecasts that are notoriously subject to error. If the forecast of a single economic indicator is off by just a single percentage point, spending estimates will be off by billions of dollars.

Each January, in the administration's budget for the following fiscal year, OMB publishes a series of economic estimates for the next six years, from which it has derived revenue estimates and outlay estimates for various programs. For example, in the Carter administration's budget for FY 1982, which was published in January 1981, OMB forecast that the annual average of the CPI would be 12.5 percent higher in calendar year 1981 than it was in 1980, and that it would increase another 10.3 percent during 1982. It further projected additional increases in the CPI of 8.7 percent for 1983, 7.7 percent for 1984, 7.0 percent for 1985, and 6.3 percent for 1986. From the record high of a 13.5 percent increase in 1980, OMB projected that the annual increase in the CPI would drop steadily, year after year. In the battle against inflation, the Carter administration was nothing but optimistic.

Not that this is unusual. Every administration, it seems, possesses an unabashed faith in its own (and its successor's) ability to conquer

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TABLE I. *"Forecasts" and "Projections" of Future Inflation Rates*[1]

ESTIMATE FOR CALENDAR YEAR	ESTIMATE PUBLISHED IN JANUARY OF:							ACTUAL RATE
	1975	1976	1977	1978	1979	1980	1981	
1975	11.3							9.1
1976	7.8	6.3						5.7
1977	6.6	6.0	5.1					6.5
1978	5.2	5.9	5.4	5.9				7.6
1979	4.1	5.0	5.0	6.1	8.2			11.4
1980	4.0	4.2	4.6	5.7	6.7	11.8		13.5
1981		4.0	3.8	5.2	5.7	9.2	12.5	10.3
1982			2.9	4.7	4.5	8.2	10.3	
1983				4.2	3.4	7.4	8.7	
1984					2.7	6.8	7.7	
1985						6.1	7.0	
1986							6.3	

1 Source: *Budget of the U.S. Government*, Fiscal Years 1976 to 1983. The Estimates and Actual Inflation Rates are measured by the percentage increase in the annual average of the Consumer Price Index over the previous year's average.

inflation. As the estimates in Table I indicate, each January the administration forecasts that the rate of inflation will drop steadily over the next six years. Yet, as the year itself approaches, the estimates somehow get higher. For example, the increase in the CPI for 1980 was projected to be 4.0 percent in January 1975, 4.2 percent in January 1976, 4.6 percent in January 1977, 5.7 percent in January 1978, 6.7 percent in January 1979, and 11.8 percent in January 1980. The *actual* inflation rate for 1980 was still higher: 13.5 percent. The same general pattern holds true for the estimates of unemployment rates and interest rates.

Now admittedly, OMB is careful to distinguish between its short-range economic "forecast" for the next two years and its long-range economic "projection" for the following four years. Each budget includes some boiler-plate language similar to the following, which is from the FY 1982 budget published in January 1981:

> The short-range economic assumptions for calendar years . . . 1981, and 1982 are forecasts of probable economic conditions consistent with the administration's budget proposals. . . .
>
> The forecasts for 1981 and 1982 are subject to substantial margins of error. For periods further in the future, economic projections are subject to even greater uncertainty. Hence, in contrast to the short-range economic forecast, *the longer range assumptions for the period 1983-1986 are not forecasts of probable economic conditions.* Instead, they are projections that *assume* steady progress in reducing unemployment and inflation. [Emphasis in the original.]

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There is uncertainty in these (or any) estimates of future economic conditions; nevertheless, the disclaimer that the long-range "projections" are not "forecasts" might be taken more seriously if: (1) these numbers were not used to calculate to four significant figures estimates of revenues and outlays—as well as of the surplus or deficit—six years into the future; (2) the budget document did not emphasize that "Control of budget growth is very difficult in the short run," implying both that the budget can only be controlled in the long-run and that it will be; and (3) the administration did not give so much public attention to the inevitable "projection"—derived directly from these optimistic economic estimates—that the deficit will shrink and disappear over the next several years.

For example, the FY 1982 budget released in January 1981 projected that the budget would be balanced in FY 1984, and with a $32 billion surplus. Again, the budget document contains a caveat:

> It should be emphasized that the [outlay, revenue, deficit, and surplus] projections do not imply that budget surpluses of this magnitude will in fact occur or that resources will in fact be available for additional spending or for debt reduction.

The problem is that the economic growth "assumed" in the long-range projections cannot occur unless taxes are cut. This paradox, as well as the unrealistic optimism of the long-range projections themselves, is lost behind the attention given to the most dramatic

TABLE II. *Estimates of Future Budget Deficits (in Billions of Dollars)*[1]

Estimate for Fiscal Year	Estimate Published in January of:							Actual Deficit
	1975	1976	1977	1978	1979	1980	1981	
1975	–34.7							–43.6
1976	–51.9	–76.0						–66.5
1977	–30.6	–43.0	–57.2					–45.0
1978	–19.6	–22.8	–47.0	–61.8				–48.8
1979	0.4	9.6	–11.6	–60.6	–37.4			–27.7
1980	25.0	40.6	13.4	–37.5	–29.0	–39.8		–59.6
1981		75.5	26.1	8.6	–1.2	–15.8	–55.2	–57.9
1982			28.6	45.2	37.8	4.8	–27.5	
1983				76.2	72.7	24.5	–8.0	
1984					106.5	81.6	32.0	
1985						158.6	84.7	
1986							138.2	

1 Source: *Budget of the U.S. Government*, Fiscal Years 1976 to 1983. Estimated surplus expressed as positive numbers.

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aspect of these projections: In just a few years we will achieve that long-sought balanced budget.

Every January this ritual is repeated. The administration in office announces that in only three or four years it will be able to eliminate budget deficits. It projects that the deficit will decline every year, until in three or four years the bewitchment is cast out and there rises up a budget surplus (see Table II). Yet, as the fiscal year gets closer, the surplus is transformed into a deficit. The January 1977 projection for FY 1981 was for a $26.1 billion surplus; the January 1978 projection was for an $8.6 billion surplus; the January 1979 projection was for a $1.2 billion deficit; the January 1980 projection was for a $15.8 billion deficit; and the January 1981 projection was for a $55.2 billion deficit. The actual deficit was $57.9 billion.[2]

Even in the short-run, the differences between economic forecasts and actual conditions can have a significant impact on the budget. In the FY 1980 budget, released in January 1979, OMB estimated that outlays would be $531.6 billion. Yet when expenditures were totaled up only 21 months later, actual outlays had been $579.6 billion. Of this $48 billion difference, reports OMB, "over half the increase [is] directly attributable to economic conditions different from those originally assumed." Yet if optimistic short-range economic forecasts can result in such errors in the short-range forecasts of the budget deficit, what will be the consequence of even more uncertain—and even more optimistic—long-range economic projections on the budget outlook?

Both OMB and the Congressional Budget Office (CBO) prepare some sensitivity estimates to indicate how much receipts, outlays, and the deficit will change if one or another economic indicator shifts by a percentage point or two. Given the short time horizons with which budget decisions are made, most of the attention is on, for example, how much the deficit will increase next year if the unemployment rate is one percentage point higher. Yet, even if the

[2] Note that the actual deficit for FY 1979 was lower than the one forecast for it in January 1979, three months into that fiscal year. The same is true for the projections made three months into FY 1978 and FY 1977. In large part, this is because the inflation rates projected for those years were low, and inflation raises tax revenues almost immediately through the withholding system and "bracket creep," while increases in outlays (for programs such as social security) lag inflation by many months. The January 1979 forecast was for the CPI to increase by 8.2 percent during 1979, though the actual increase was 11.4 percent. The January 1979 outlay forecast was $493.4 billion, with actual outlays only $300 million more ($493.7 billion). But the January 1979 revenue forecast was $456.0 billion, ten billion dollars below the actual revenues of $465.9 billion. Consequently, the deficit of $27.7 billion was nearly ten billion dollars less than the forecast deficit of $37.4 billion.

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TABLE III. *The Impact on the Deficit Over Five Years of a 1 Percent Error in Each of Four Major Economic Indicators in the FY 1982 Budget (in Billions of Dollars)* [1]

ECONOMIC INDICATOR	1982	1983	1984	1985	1986
Real Economic Growth	8	17	33	47	66
Inflation[2]	–4	–11	–19	–33	–49
Unemployment	19	28	30	33	35
Interest Rates	2	4	5	6	7

1 Source: Congressional Budget Office, *Baseline Budget Projections: Fiscal Years 1982-1986.*
2 Note that inflation actually decreases the deficit. This is because inflation immediately increases tax receipts through "bracket creep," while increased outlays for indexed entitlement programs lag increases in the inflation rate by over a year. Over the long-run, however, inflation increases tax revenues as a percent of GNP, and thus Congress cuts taxes to mitigate the effect of bracket creep; such tax cuts took effect in 1964, 1969, 1971, 1975, 1976, 1977 and 1978.

impact is small in the short-run, the cumulative consequence of a continual, long-run error can be quite large.

Last July, CBO estimated what would happen to the baseline deficit if, beginning on January 1, 1982, any one of four key economic indicators was one percentage point worse than assumed in the first budget resolution for FY 1982 (see Table III). What would be the impact of a one percentage point decrease in real economic growth? What would be the consequence of a one percentage point increase in the inflation rate, or in the unemployment rate, or in interest rates? In most cases, the initial impact on the FY 1982 budget would be small, though a one percentage point increase in unemployment for only nine months of that fiscal year would increase the deficit by $19 billion. But, as the years go by, the impact of a one-percentage-point discrepancy multiplies. For example, if real growth is off by only a single percentage point for calendar years 1982 through 1986, the deficit will be $66 billion greater by FY 1986. And the cumulative addition to the deficit is $58 billion for the first three years, and $171 billion for all five. A small change in an economic assumption that is *constant* over time results in a change in the budget deficit that *grows* over time.

The great temptation

The deficit, or the surplus, in the federal budget is the difference between two large numbers: revenues and outlays. Moreover, that deficit difference is "small," at least compared with revenues and outlays. Usually, the deficit is somewhat less than 10 percent of

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either outlays or revenues; even in 1976 when the deficit was a record $66.5 billion, it was still only 18 percent of revenues. Consequently, a comparatively small decrease in outlays or a similarly small increase in revenues can lead to a much larger (relative) shift in the deficit. For example, in the Carter administration's January 1981 budget for FY 1982, outlays were to be $739.3 billion, revenues $711.8 billion, and the deficit $27.5 billion. With those numbers, a 1 percent increase in revenues ($7.1 billion) leads to a 26 percent decrease in the budget deficit, and 1 percent decrease in outlays ($7.9 billion) leads to a 29 percent decrease in the deficit.

If federal outlays are sensitive to changes in economic conditions, then small adjustments in economic assumptions can, while having a small impact on total revenues and total outlays, have a much more significant impact on the deficit. Adjusting the economic assumptions cannot cause next year's deficit to vanish, for some of the uncontrollable increases in next year's outlays have already been determined by last year's inflation rate. In the long-run, however, forecasting economic nirvana can appear to decrease slowly and eliminate eventually the most persistent of deficits. All the budgetary wizard needs to do is to summon up the necessary economic assumptions: declining inflation, unemployment, and interest rates, plus some real economic growth. Then—like magic—the budget is in balance.

So strong is this temptation that it seduces both Republicans and Democrats, the Congress as well as the executive. When the Reagan administration took office in January 1981, it was constrained in the type of budgetary changes it could make by the optimistic economic assumptions contained in the budget that the Carter administration had released only days before. Nevertheless, when the Reagan administration released its budget revisions in March of 1981, it projected even lower rates of inflation, unemployment, and interest, and greater economic growth. From these revised economic assumptions and the policy changes that the Reagan administration wanted to initiate, OMB produced revised estimates of outlays and revenues. For FY 1982, Carter's outlay estimates were reduced by $44 billion (from $739.3 billion to $695.3 billion). This was the net result of $10 billion in additional outlays due to policy increases and $53 billion in reductions, of which $15.4 billion was the result of reestimates, corrections, and revised economic assumptions. Of the net reduction of $44 billion, more than a third was the result of such reestimates; less than two-thirds of the reduction was due to the net effect of policy changes.

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Then it was the Congress's turn to adopt its first concurrent budget resolution for FY 1982. It too needed a set of economic assumptions. In the Democratic-controlled House, the Budget Committee developed a set of economic assumptions that was more pessimistic than either Carter's or Reagan's. In the Republican Senate, the budget committee (voting strictly along party lines) rejected a Democratic proposal to use CBO's economic assumptions. Instead, it adopted assumptions for 1982 that were "identical to those used by the [Reagan] administration in its budget request, except that the interest rate assumptions were revised [upwards from 8.9 percent to 12.0 percent for 1982] to be more consistent with the real growth, inflation, and monetary growth assumptions." These numbers were then accepted by the full Senate as well.

When the House took up the budget resolution as reported out by its budget committee, the administration backed an alternative offered by Representatives Phil Gramm and Delbert L. Latta. The Gramm-Latta substitute deviated from the administration's proposals in several respects, but it employed the same set of economic assumptions for 1982. After six days of debate, and many arguments over economic assumptions, the House adopted the Gramm-Latta resolution and thus also the Reagan administration's assumptions. Said Representative Gramm on the day of the vote: "we are dealing with budgets that make different economic assumptions so it is hard to make comparisons. Who is right? Probably both sets of assumptions are wrong."

Then, a House-Senate conference committee met to reconcile the conflicts between their two resolutions. In the old days, a conference committee on budget matters would split the difference on the amount authorized or appropriated. This, however, is no longer sufficient, for the differences in many revenue and expenditure numbers are now derived from differing economic *assumptions*. Nevertheless, in settling their disagreements over such assumptions, the traditional legislative spirit of compromise prevailed. For 1982, the House and Senate had adopted economic assumptions that were identical for everything but interest rates; for this, they split the difference. Rather than the House's interest rate of 8.9 percent or the Senate's of 12.0 percent, the conference committee agreed that for 1982 interest rates would be 10.5 percent.

For Congress to make the cuts required by the reconciliation instructions in its first budget resolution for FY 1982, CBO had to derive a new budgetary baseline from the economic assumptions contained in the resolution. Then, when the various committees un-

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dertook to make the cuts mandated by the reconciliation instructions, there did exist a common, agreed-upon baseline from which all cuts would be made. Still, with OMB using a different number for interest rates in 1982, as well as different assumptions for other economic indicators in other years, it was sometimes hard for the executive and legislative branches to compare notes.

In the budget process, economic assumptions appear to be no different than any other budget number. Nobody's forecast can be conclusively proven to be superior to anyone else's. Indeed, as Rep. Gramm argued, history will prove that nobody's economic prediction was perfectly prescient. Moreover, since these assumptions must be adopted by a majority vote, they are subject to the traditional vagaries of partisanship and vote trading. In such circumstances, splitting the difference on economic assumptions has a certain legislative logic.

Using a single set of economic assumptions

An intelligent debate about the size of the budget requires a set of ground rules. This means a single set of economic assumptions from which a single set of budget projections is made, and from which the impact of all budgetary changes is calculated. Such a common set of budget assumptions, which everyone would use, could be obtained in a variety of ways.

For example, the government organizations primarily responsible for the budget (the Office of Management and Budget, the House and Senate Budget Committees, and the Congressional Budget Office) could agree to use a compromise set of numbers. Indeed, these organizations have been exploring different ways of doing this. An independent, governmentally-appointed commission could be charged with the responsibility of developing the economic assumptions that everyone would use in the budget debate (in some European nations, independent, quasi-official organizations make the economic forecasts that the Government uses). Everyone could use the average of the different forecasts made by several of the major forecasting firms (e.g., Data Resources, Chase Econometrics, and Wharton Econometric Forecasting Associates); such "consensus forecasting" is now employed by a number of corporations. Alternatively, everyone could use a set of arbitrary but easily calculated numbers; for example, Rudolph G. Penner, a former Assistant Director of OMB, suggests obtaining a single set of assumptions by simply averaging the economic conditions of the past five years.

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Since no method of economic forecasting can guarantee perfect results, which set of assumptions is adopted is less important than that everyone employ that same set. To be accepted as the basis for all budgetary discussions, the common set of assumptions must possess political legitimacy. Thus, the primary criterion for selecting the process for developing the numbers is neutrality—that is the advantage of the Penner proposal. It is so obviously arbitrary that no one can claim it is the product of a political conspiracy. And since the calculation is so easy to perform, no one can claim that the numbers have been manipulated. Whatever process is used, it must produce the required economic assumptions before the beginning of each budget season, that is, before the President presents his budget to Congress in January.

There are three major benefits that will result from requiring everyone to use the same set of economic assumptions. First, it will make it possible to compare different budget programs, for everyone will be calculating their costs and savings from the same baseline and no one will be able to exaggerate the impact of his particular proposals by making his own calculations using his own economic assumptions. As Rep. Gramm noted, only when everyone is using the same set of economic assumptions will it be possible to compare the budgetary, social, and economic consequences of different proposals.

Second, a single set of assumptions can dramatize the long-run problem of controlling the budget. The deficit projections offered in the budget each January repeatedly suggest that the problem is only temporary; the budget will have a deficit for the next two years, but then it will disappear. Optimistic economic projections conceal the impact of the built-in expenditure increases for entitlement and defense programs. Indeed, they focus attention on reducing next year's deficit and divert attention from the need to make changes that, while saving little in the short run, will have significant long-term consequences. Political leaders have short time horizons, and optimistic economic assumptions provide another reason for not worrying about the long term. Of course, the single set of economic assumptions could also be too optimistic, but any assumptions that emerge from a politically neutral process are less likely to be so.

Third, using a single set of economic assumptions will provide a mechanism for demonstrating that real progress is being made. No longer will individuals and organizations be able to claim to achieve specific economic goals—be they a balanced budget, full employment, or whatever—simply by projecting miraculous improvement in

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economic conditions. There would be a common baseline against which everyone would have to gauge progress. For those who wish to show Wall Street that the budget deficit is being reduced, this baseline would provide a neutral and politically objective starting-point from which to measure the impact of their program. Political leaders would have to compete by making changes from the common baseline rather than by manipulating the economic assumptions.

Of course, different budgetary programs will have different effects on the economy and thus will feed back in different ways on the budget and the deficit. Indeed, that feedback effect is what Presidents use to argue that their programs will improve the economy—and thus eliminate the deficit. Yet such feedback is difficult to forecast; no one has a particularly impressive track-record in making such predictions. We hardly understand the feedback mechanisms well enough to attempt to predict the impact of different budgetary programs on the economy, let alone their different effects on the budget. Using a common (and fixed) set of economic assumptions ignore such feedback effects when the budgetary calculations are made, but perhaps everyone ought to be a little more realistic in claiming large miracles.

Indeed, Presidents, budget directors, and other political leaders might secretly welcome the need to work from a common set of assumptions they could not manipulate. No longer would they feel compelled to conjure up some rosy economic forecast in order to fulfill the political commandment, "Thou shalt project a balanced budget in three years." They would be able to concentrate on real rather than cosmetic budget changes. They would have a mechanism for demonstrating that their program would, in fact, achieve significant results.

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The Courts Are Not Killing Our Children

JULIUS MENACKER

THE Summer 1981 issue of *The Public Interest* carried a piece by Edward A. Wynne titled "What Are the Courts Doing to Our Children?" The crux of Wynne's answer is that liberal decisions strengthening student civil rights protections have weakened adult authority and caused alienation between educators and students, a shattering of a sense of community, despair and confusion among educators who have lost control of their clients, and an impersonalization within schools that is destructive to both educators and students. All of this, according to Wynne, is related in an important way to dramatic increases in youth homicide, suicide, and illegitimate births. That is what the courts are doing to our children.

My objections to this line of thought are numerous, and can be organized under three general categories of rebuttal. First, I will argue that other trends in society, unrelated to court decisions favoring student civil rights protections, appear far more persuasively related to youth homicide, suicide, and out-of-wedlock births. Second, I will show that, while the U.S. Supreme Court has certainly strengthened student civil rights since 1955 (the period in which Wynne's figures show the beginning of dramatic rises in his three indices of student self-destructiveness), this trend is not as mindlessly one-sided as Wynne suggests. And third, I will take the position that this pro-civil-rights Court trend was necessary and proper, not only for students but for teachers as well, giving the lie to Wynne's portrait of an idyllic past characterized by orderliness, caring, and productivity in public school relationships.

WYNNE's graph, "Changes in the Rates of Youth Homicide, Suicide, and Illegitimate Births" (p. 5), shows that, in the pre-1955 period, the high points of youth homicide and suicide were during the Great Depression of the 1930's followed by substantial declines in the two following decades. This is the case even though this period included the 1943 *West Virginia v. Barnette* decision establishing the rights of students with religious objections to be exempt from mandatory pledges of allegiance to the flag imposed by school authorities, and the most important Court ordered strengthening of student civil rights experienced in American history, the

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1954 *Brown v. Board* decision. In fact, youth homicide does not dramatically spurt upwards until well into the 1960's, with youth suicides spurting upward in the late 1950's-early 1960's, according to Wynne's chart. No pre-1955 comparison is possible for illegitimate births.

It appears reasonable to suspect that forces outside the school determine the rates of youth self-destructiveness. In the pre-1955 period, the cause appears to be economic problems in the larger society outside of the school. As for the post-1955 period, the Vietnam War and post-war economic recessions appear to be more persuasive causes of youth self-destructiveness than liberal court decisions. Added to youth despair over participation in an unpopular war, inflation, and unemployment are other important trends that occurred in the out-of-school environment. Most prominent of these are the dramatic increases in the rates of divorce, population transiency, and experiments in non-married living arrangements for youth. Traditional neighborhoods disappeared, youth sexual relationships changed, families became more tenuous, and economic security even more tenuous. A good argument can be made that the advent of the birth control pill was the root cause of youth self-destructiveness as that the courts were the culprit. An even better argument can be made for the Vietnam War and economic problems as the cause of increased youth self-destructiveness.

Wynne does not mention the specific court decisions he accuses of stimulating youth homicide, suicide, and out-of-wedlock births. The major cases to which he must have referred almost certainly would include *Tinker v. Des Moines*, 1969, and *Goss v. Lopez*, 1975. These two U.S. Supreme Court decisions set the precedents for the expansion of student civil rights by lower courts. However, youth suicide had already begun its upward path well before *Tinker*, with youth homicide coincidental to it. Clearly, both trends were well established before *Goss* was decided.

There is one more important reason for favoring general economic and social conditions as causes of increased youth self-destructiveness over liberal court decisions. There is considerable doubt about the effectiveness of court decisions in changing behavior at the school level. Most research on the subject indicates that not only have schools been reluctant to abide by court decisions (remember the problems in implementing *Brown* in the South and current problems of *de facto* segregation in the North), but quite often school administrators are unaware of important court decisions affecting the civil rights of students. To suggest that these haphazardly enforced decisions on free speech and due process, to say nothing of educational recalcitrance on equal protection issues, constitute a major reason for students killing themselves and others cannot be supported logically or empirically.

IN 1977, the U.S. Supreme Court decided the case of *Ingraham v. Wright*. Two students had been severely beaten (one lost the use

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of an arm for several days and the other suffered severe hematoma) for being "slow to respond to instructions." The students sued, claiming violations of due process and the prohibition of "cruel and unusual punishment." The Court found for the school authorities on both issues. In 1981, the Supreme Court refused to review the decision of the U.S. Court of Appeals, Seventh Circuit, that school authorities were acting within their rights and the law when they used dogs in unannounced raids on junior high school classrooms to search for illicit drugs (*Doe v. Renfrow*). In the same year, the California Court of Appeals affirmed a lower state court's ruling that school authorities could prevent a high school student from wearing a badge containing language considered obscene, the student's claim of free speech rights notwithstanding (*Hinze v. Marin County*). Finally, there is the 1981 Federal Appellate Court ruling in *Rose v. Nashua Board of Education.* In this case the court upheld the lower court's ruling that the school board had the right to suspend bus service to all students served by routes on which serious indiscipline had occurred.

These examples are presented to demonstrate that the courts have by no means been as intent on destroying educator authority over students as Wynne would have us believe. I could construct an equivalent list of recent decisions favoring Wynne's view. The point is that these cases are decided according to specific facts presented and specific points of law to which they apply. The courts do not simply decide to support students or educational authorities as a matter of general policy. It is a question of law, particularly constitutional civil rights law and its application and interpretation. While it is clear that Supreme Court decisions have greatly expanded and strengthened the civil rights of students in the past decade or so, there has not been the excessive, unbridled, one-sided tearing down of adult authority over schools suggested by Wynne. Certainly, court interposition of principles supporting student civil rights has not extended to the point where the hands of school authorities are so tied that student freedom and libertinism has caused an orgy of school-related self-destructiveness.

Without question, Wynne is right about the increased litigation that attends public school administration. He sees it as pettifogging litigation undercutting legitimate adult authority. I see it as part of the price we pay in a democratic society for continuing the political process of defining the relationship between the individual and government, and protecting the rights of all citizens, regardless of their position in society.

WYNNE expresses nostalgia for the "good old days" of strong communities and clear, well-ordered relationships among and between parents, children, and educators, which the courts have helped destroy. In this scenario, student civil rights protections were unnecessary, and their advent has some sort of cause-effect relationship with the decline of order and good human relationships in both the

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school and the larger community. I grew up in Chicago, and attended its public schools, as did Wynne's friends who reported to him their idyllic recollections of the well-ordered past. I have different memories. I remember unreasonable teachers and administrators imposing outrageous punishments on students and being both negligent and callous in their duties to and relationships with students. Certainly, not all of these educators were bad—most were good. But there was little check on the mean and incompetent ones.

The parents and students were not litigious. It was an immigrant neighborhood; parents were grateful for the educational opportunities afforded their children and supported the teachers and principal, right or wrong. The school operated unimpeded by "pettifogging litigation" or even less demonstrative protest. This taught us, among other things, to regard adults and the general authority system with a good degree of scepticism and cynicism. Ideals of virtue and goodness might have been preached, but they were not practiced, and the lesson was not lost on many of us. I believe that the moral and ethical lessons to be learned in school are as important as the cognitive elements of the curriculum. If a just society within the school can only be realized with the guidance of the courts, so be it.

In later years, it became clear to me that teachers suffered from the same unchecked power wielded by administrators and boards of education over them as they held over students. It was no small point that Justice Fortas made in his *Tinker* opinion, when he noted that: "It can hardly be argued that either students or teachers shed their constitutional rights. . . . at the schoolhouse gate." The gratuitous inclusion of teachers in this opinion concerning a student free-speech case was well-advised and necessary. I will limit myself to just one example for students and one for teachers to demonstrate that far from the wholesome, enlightened paternalism of past educational relationships characterized by Wynne, there was considerable abuse of power and authority, trammeling basic rights assumed under our Constitution.

In its review of the *Goss v. Lopez* case of 1975, the Supreme Court was upset to learn that about 10 percent of students were suspended at least once during a typical school year in American public high schools, and the rate for members of minority groups was about double that average. The Court found that in the specifics of this case, even the most rudimentary forms of due process were denied to the students who had been suspended. They were neither told specifically why they were being suspended, nor were they afforded any opportunity to present any explanation or rebuttal. This is typical of the past Wynne would like to recapture. Common sense suggests to me that if school can contribute to tendencies of students toward homicide or suicide, it would be the feelings of powerlessness and injustice inflicted upon them in cases like this that would encourage this destructiveness, not the opportunity to assert themselves and present their side of the story.

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Staying with the area of due process, consider the complaint of the teachers who were the protagonists in the 1974 companion cases of *Cleveland v. LaFleur* and *Cohen v. Chesterfield* presented to the U.S. Supreme Court. The plaintiff teachers were arguing against school board regulations setting arbitrary points at which pregnant teachers must leave their positions and before which they could return to teaching after delivery. In one case, a teacher was required to leave teaching upon entering the fifth month of pregnancy. In another, the teacher could not return to teaching until three months following child delivery. The Supreme Court agreed with the teachers that this was such an arbitrary way to handle this aspect of personnel policy that it constituted a violation of basic fairness to teachers who possessed individual differences. Not insignificantly, the Court noted that the rules which presumably were to insure teacher continuity for students often worked against this goal, as with the teacher reaching the fifth month a couple of weeks before the end of a school term, or delivering her child two and a half months before the opening of a new term.

In summary, the educational community of the time before court activism in schools included legally segregated schools, systematic denial of equal opportunity to black children (*Brown v. Board*, 1954), imposition of Christian sectarian dogma on non-Christian public school students (*Engle v. Vitale*, 1962; *Abington v. Schempp*, *Murray v. Curlett*, 1963), blatant racism in student placement and tracking procedures (*Hobson v. Hansen*, 1967), and general second-class citizenship for teachers. I, for one, believe that the advances made by these court decisions have strengthened our democracy, and improved the development of social maturity and competent citizenship among American public school students. Rather than contributing to the self-destructive trends that Wynne presents, I believe that the interposition of restraints on school authorities, whether boards of education and administrators in regard to teachers or educators in regard to students, has helped students achieve a more useful, wholesome sense of the place of the citizen in American society and a better developed social maturity. If "pettifogging litigation" is the price that must be paid for this, it is a small price to pay. Further, the remedy to such litigation lies in respect for the rights of others on the part of educational authorities. Suits are not inexpensive, whether measured in terms of money, time, or emotional drain. It is the vulnerability of school authorities that stimulates suits, not a judiciary blindly supportive of students or others protesting school authority.

Justice Jackson captured the point I am trying to make in the following excerpt from his opinion in *West Virginia v. Barnette:*

> Boards of Education. . . . have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional free-

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doms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Julius Menacker is Professor of Education at the University of Illinois, Chicago Circle.

Courts, Schools, and Family Choice

EDWARD A. WYNNE

As is often the case in intellectual disputes, the contentions of Professor Menacker and myself tend to pass each other like ships in the night. This is especially unfortunate since there are important differences. But first, let me make sure readers realize why many of our contentions are really not in dispute.

Menacker implied that I said the courts were the sole, or the central, cause of growing youth disorder. What I did say is that changes in school policies due to court decisions are "important causes" of such disorder. As such language implies, there are other "important causes." (For a more thorough sketch of other actual and possible causes, see the forthcoming piece by Jonathan Shapiro and myself, "Adolescent Alienation: Evaluating the Hypotheses," *Social Indicators Research*. Essentially, the discussion and data analysis in that article support the hypothesis that the growth in disorder is the outcome of a multiplicity of social and institutional changes.)

Readers will be interested to know that—Menacker's contention to the contrary—there is little or no significant research supporting the hypothesis that much of the increased disorder is due to the increase in single parent families. The most careful research so far has revealed that, when other variables are controlled for, there is only a modest correlation between various measures of youth disorder and being reared in a single parent family. (See L. Rosen in "Delinquency in Single Parent Families," M. Woffgang et. al., eds. *Sociology of Crime and Delinquency*, (New York: John Wiley, 1977). This is not to say that such rearing is not a factor at all; however, the research so far has shown that its effects, when examined alone, are modest.

I also never contended that recent court decisions tend in a uniform direction (towards enlarging student "rights"). My position is essentially similar to Menacker's: that courts have "strengthened student civil rights since 1955." Of course, not all court decisions in our whole country have taken a similar tack, and it may even be

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that some courts are reconsidering some of their previous (ill considered) decisions. But as Menacker admits, a new set of rights and precedents has been established. I simply think, unlike Menacker, that these changes on the whole are for the worse.

A typical instance of such bad effects came to my attention the other day. The issue is what teachers or schools can do to punish students who are irresponsible in their class attendance, either through excessive absence or lateness. One traditional technique has been to reduce pupils' grades—even if they perform adequately on their tests. The justification for this punishment is that such absences and lateness not only handicap the particular student, but also generally waste class time by deadening class discussion among uninformed students and otherwise disrupting teaching. The following outline lists court-established principles governing the use of grade reduction policies by teachers. The outline was published for the enlightenment of teachers and administrators in an educators' newsletter.

1. There should be a reasonable relationship between the attendance policy formulated by the board to reduce grades and the purpose of bettering education. (*Jacobs v. Benedict*, 301 N.E. 2d 723 (1973).)
2. There seems to be no question at this juncture that minimal due process must be afforded students in grade reduction cases; but the amount of due process required is still an open question. (*Jacobs v. Benedict*, 301 N.E. 2d 723 (1973); *Hamer v. Board of Education*, 382 N.E. 2d 231 (1978).)
3. In drafting a policy where a student's grades are reduced due to excessive absences, the board should stress that its purpose is to protect academic standards, rather than emphasize the disciplinary aspects of the policy. (*Haight v. Board of Education*, NO. 78-1051 (1978).)
4. In reducing a grade based upon excessive absences or tardiness, the board should not place unexcused and excused absences into the same context; the board should not use excused absences as a basis for lowering a grade. (*Stoneberger v. Board of Education* of USD NO. 331, NO. 80 C54 (May 15, 1980).)
5. Some courts use the "severity test" to determine the legality of the grade reduction. Under this test, the board should weigh the severity of the punishment (grade reduction) against the severity of the misconduct (absences) to determine if the grade reduction is appropriate. (*Knight v. Board of Education*, 348 N.E. 2d 299 (1976).)
6. It is necessary to check state statutes and local board policy to be sure that any disciplinary action is consistent with the authority granted by statute and regulation. (*Dorsey v. Bale*, 521 S.W. 2d 76 (1976); *Gutierrez v. School District R-1*, 585 P. 2d 935 (1978).)

The only rule of thumb about grade reduction policies I can derive from these principles is that it is better for teachers to ignore students' absences and lateness than to try to devise some simple,

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efficient policy of punishment. And such neglect is just what occurs in too many schools.

WHETHER the past was "idyllic" is complicated, although I never urged such a proposition. I would contend that (a) the hard, undisputed evidence shows that our rates for youth murder, suicide, and illegitimacy were much better in the past, and in that sense the present is much worse than the past; and (b) the most careful analysis of long term trends of in-school disorder (Robert Rubel, *The Unruly School,* (Cambridge: Heath/Lexington, 1977)) concluded that our current levels of school disorder are the highest in the 25 year period covered in the book. If yearning for the return of the past means I want to lower our rates of youth suicide, homicide, illegitimacy, and in-school disorder, then I plead guilty. Does Menacker want us to accept the status quo? And, if not, what does he propose to do to change things? Should we further increase the individual rights of students via more court intervention?

Professor Menacker and I agree that individual children in schools sometimes need a process of protection or appeal, not necessarily because schools are especially bad (as compared to other agencies), but because all human groupings sometimes abuse their members. The intellectual problem is: What should be the characteristics of this structure of appeal? For example, during the 1960's much emphasis was given to the concept of formal community control of schools, by parent councils and other such entities. In part, that control was to serve as a form of appeal for students. Menacker and I agree that this device has been ineffective at best, and sometimes even counterproductive. Menacker believes that courts can serve this necessary protective role. His belief is, in effect, mirrored by the activist judges and lawyers who have brought about the "unprecedented" changes.

But courts are a blunt, cumbersome, and awkward tool for reshaping human relations. Thus, as my article showed, their efforts to correct real or imagined injustices suffered by individuals or small groups have helped lower the communal vitality of schools *in toto.* To my mind, a more important corrective would be to increase the power of family (and hence student) choice among schools, or among programs within particular schools. After all, when we do not like the hamburgers we buy at McDonalds we usually do not sue them or complain to the customer advisory council. We simply go to Burger King. We save our lawsuits against McDonalds for really drastic injuries, and not for every petty slight.

READERS realize that a variety of schemes to increase family choice are now in practice or under consideration in various guises. The schemes range from magnet schools, to special programs, to greater reliance on private (both religious and secular) schools, to forms of tax rebates and voucher systems which subsidize family choice. The effects of these schemes vary, yet they are all, in part, a

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response to excessive court interference with relationships in the typical public school. Putting it simply, most parents do not want their children enrolled in high schools where the adults involved are reluctant to stop a student from wearing a t-shirt advertising the use of marijuana.

Educators and other policy makers who say they are interested in saving the public schools must begin to realize that such saving can only take place if (a) intrusive court decisions are constrained and reversed, and (b) the correction of occasional grievances suffered by students and parents is left more to the pressure of "market choices," and families are provided with more such choices.

Edward A. Wynne is Associate Professor of Education at the University of Illinois, Chicago Circle. He is also editor of Character.

CONTRIBUTORS

GARY L. MCDOWELL is Fellow in Law and Political Science at Harvard Law School and Assistant Professor of Political Science at Dickinson College. . . . CHRISTOPHER JENCKS is Professor of Sociology and Urban Affairs at Northwestern University. . . . JAMES CROUSE is Professor of Educational Studies and Sociology at the University of Delaware. His research is supported in part by a grant from the University of Delaware Research Foundation. . . . WILLIAM A. SCHAMBRA is Assistant Director of Constitutional Studies at the American Enterprise Institute. A version of his article was presented during Public Policy Week at AEI. . . . JULIAN L. SIMON is Professor of Economics and Business Administration at the University of Illinois, Urbana-Champaign. . . . MARTIN FELDSTEIN is President of the National Bureau of Economic Research and Professor of Economics, Harvard University. . . . JOHN H. BUNZEL, former president of San Jose State University (1970-1978), is a Senior Research Fellow at the Hoover Institution at Sanford. . . . JOSIAH LEE AUSPITZ directs the Project in Public Philosophy for the Sabre Foundation. His article is adapted from a talk given to the Committee for the Study of the American Electorate. . . . ROBERT D. BEHN is as Associate Professor at Duke University's Institute of Policy Sciences and Public Affairs.

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CURRENT READING

Who's Behind the Minicam?

A recent study in the October 1981 issue of *Public Opinion* provides a sobering look at the political and social values of the "media elite" in America. The authors, S. Robert Lichter and Stanley Rothman, believe that the media elite constitutes a new and powerful leadership group that is competing for influence, status, and legitimacy with such established elites as labor, business, and government. As columnist Joseph Kraft writes:

> In the past two decades, those of us in the press have undergone a startling transformation. We are among the most principal beneficiaries of American life. We have enjoyed a huge rise in status, in income, and in power. We have moved from the sidelines to the center of the action.

Rothman and Lichter conclude that the influence of the media is based not only on its ability to provide information to political and social leaders, but also by its ability to set the tone, style, and agenda of public debate. Thus the media, to a considerable degree, act as the arbiters of public values, concerns, and tastes in addition to fulfilling its traditional role as a transmitter of information.

The survey of media elites was conducted in 1979 and 1980. The authors interviewed editors, reporters, columnists, department heads, anchormen, and news executives at the major networks and at such major magazines and newspapers as *Newsweek*, *Time*, *The Washington Post*, *The New York Times*, and *The Wall Street Journal*. The study shows a high degree of sexual, educational, geographic, and political uniformity among the media elite. The elite are overwhelmingly white, male, and politically liberal. More than two-thirds come from the big industrial states, 95 percent attended college, and 78 percent had incomes of over thirty thousand dollars in 1979. Almost half come from professional upper-middle class backgrounds. Over one half indicated no religious preference, while fewer than 10 percent admitted to attending religious services regularly. What we get from this survey is a portrait of an elite that is well educated, secular, and cosmopolitan in outlook and sympathy.

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And this cosmopolitanism disposes the media elite to social and political liberalism, a liberalism which is reaffirmed by exposure to the values and attitudes of their colleagues and which is exemplified by their voting behavior. Over half say that the people they work with profess left-wing sympathies while only 8 percent said that their colleagues profess to be on the right. The voting patterns of this group are even more conclusive. Rothman and Lichter studied the results of every election from 1964 to 1976 and found that support for the Democratic Presidential nominee by the media elite never dropped below 80 percent.

This liberalism is supported by the responses to a wide variety of questions on current key policy issues, but it shows up most strongly on questions dealing with socio-cultural and foreign policy matters. The media elite are strong supporters of affirmative action, gay rights, the women's movement, the right to have an abortion, and sexual freedom in general. The media elite also tends to be critical of American foreign policy: 56 percent feel that America causes poverty by exploiting Third World nations, 75 percent disagree with the statement that the U.S. has helped the Third World, while 51 percent believe that the main goal of our foreign policy is to protect the interests of American business abroad.

The media elite is considerably more conservative on economic issues. Most believe that corporations should not be publicly owned while strong majorities also believe that those with more ability should earn more, that private enterprise is fair to American workers, that less regulation is good for the economy, and that government should not guarantee jobs. But equally strong majorities believe strongly in the system of welfare capitalism as it has existed since the New Deal. Most believe that government should aid the poor and reduce inequalities in income and opportunities.

The media elite has strong and definite opinions as to what direction American society should take in the future. Rothman and Lichter position the media elite on the side of "expressive" and "post-bourgeois" values. That is, they favor transforming the political and moral culture of advanced industrial society and believe that social goals of increased participation in civic and political life, beautiful cities, valuing ideas above making money, and all the attributes of a "humane society" are more important than the traditional "acquisitive" goals of national defense, economic growth, and making money.

On these "quality of life" issues the goals of the media elite were compared with those of the business elite and the contrasts were striking. Only one out of eight executives picks any of the expressive values as the nation's most pressing concern, while fully one out of three journalists believe that expressive values should take primacy over acquisitive values. Nearly half selected a "humane society" as their most important priority while only 20 percent of the business elite shared that view. Businessmen list national defense as an important social goal more than twice as often as the media elite does,

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and, finally, the media elite is twice as likely as business leaders to choose acquisitive values as the least important social goals for America to pursue.

In this vein the media elite would also like to see a redistribution of power and influence among key groups in society. They firmly believe that business and labor groups exercise far too much power while black leaders, intellectuals, feminists, and consumer groups are relatively disadvantaged when it comes to exercising power and influence in setting the economic and social agenda of society. However, in the social hierarchy media elites prefer, the media would be the most important and most influential of all leadership groups in society.

—Fred Friedman

Why Mr. Chips Can't Read

" 'There are 108 second graders in McBride Elementary School. If the ratio of boys to girls in that group is 5 to 4, how many boys are in the second grade? . . . 12 . . . 48 . . . 60 . . . 135.' " As things now stand in some states, persons unable to answer this question can be granted degrees in education, and, consequently, given licenses to teach in public schools.

But the *New York Times* reports (February 1, 1982) that this may not stand for long. A "teacher testing movement" is underway. To date, 18 states, concentrated in the South but including California and New York, have proposed requirements for people applying for licenses—requirements based not simply on receipt of a degree in education, which has been the case, but on the passage of tests that include questions such as the sample above.

"The testing trend," the *Times* reports,

> is closely tied to concern that the performance of students is declining, a concern that has been reflected in surveys by the National Assessment of Educational Progress, which is a Federal program to monitor the schools. More and more, teachers are being held responsible for what are perceived to be failures. . . .
>
> College entrance tests such as those in California show that young people preparing for careers in teaching are often among the least able.
>
> "The harsh fact is that we cannot have gifted teachers if gifted students do not enter the profession," Ernest L. Boyer, president of the Carnegie Foundation for the Advancement of Teaching, said in a recent speech at Yale University.

Teachers and schools of education have responded to this trend with outrage. Says Charles S. Gifford, acting dean of the education college at the University of New Orleans: "Questions about paintings that they will never see, theorists they will never have to quote and where the first kindergarten was located do not tell me that someone is a good teacher."

Other responses reflect the serious practical consequences of the tests:

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In Alabama, blacks have sued in Federal court, saying the nature of the test is discriminatory. . . .

The suit in Alabama charges that black candidates for teaching certificates were penalized "for having to acquire all or part of their formal education in segregated public high schools." It said that the test, in effect, "systematically excludes black graduates from obtaining regular certification needed to enter the teaching profession."

It was filed in behalf of three blacks who were among the 75.4 percent of the black candidates who failed the test last June. Only 12.4 percent of the white candidates failed.

The possibility of similar challenges in other states is arousing concern. In New Mexico, where the testing of teacher candidates will not start until next year, there is already some worry about the impact on the sizable number of Mexican-Americans seeking teaching jobs. . . .

Results of the certification tests given in Florida since the law took effect in 1980 indicate that the education school at Florida A.&M., a predominantly black university, is in danger of losing its state accreditation later this year if the requirement that 80 percent of the graduates must pass the test is imposed.

"The teaching profession in Florida is programmed to become racially exclusionary and elite," said Walter Mercer, a professor at Florida A.&M.

A glance at the troubles of another state, however, might cause Alabama and New Mexico to hold their fire. It seems a more interesting menace of the new requirements is that they might leave us with too few teachers of *any* color. In Louisiana, the *Times* tells us, "the cutoff mark for failing the test has been lowered to maintain passing rates at a high enough level to keep the state supplied with teachers." And in Florida, "officials of teachers' colleges are worried about a legal provision that would withhold accreditation from teachers' colleges where at least 80 percent of the graduates do not pass the test."

Apparently,

The attempt to raise the level of those admitted to teaching comes at a time when school districts find it increasingly difficult to be choosy about whom they hire. The profession has lost much of its attraction as salaries lag, job security disappears and conditions in classrooms grow more and more unpleasant. Even at a time when fewer teachers are needed because of decreasing enrollment, there is a shortage of science and mathematics teachers.

Moreover, women, once the backbone of the profession, are flocking to a host of new careers that have opened to them in recent years.

The solution? It was inevitable:

Persuaded that higher salaries as well as testing were needed to attract more able people to teaching, the Legislature in Oklahoma linked statewide pay raises for teachers to the testing program.

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Understanding Black Teenage Unemployment

Whenever unemployment becomes a mounting concern, particular attention is paid to the discrepancies in the rates of black and white teenage employment. White teenage employment rose overall during the 1970's, despite recession setbacks, after a severe decline in the 1950's. Black teenage employment, though initially higher than that of whites in the same bracket, is now significantly lower, so much so that by 1978 only one half as many black as white teenagers were employed.

The explanations are many and varied, including the growth of the black teenage population, their concentration in areas of urban decay, increased welfare dependence, the declining quality of education, and even renewed racism. John Cogan, a Senior Research Fellow at the Hoover Institution, argues in "The Decline in Black Teenage Employment, 1950-1970," a Working Paper from the National Bureau of Economic Research, that this drop in the black employment ratio (from 46.6 percent to 27.0 percent) is a primarily regional phenomenon.

The first indication that the problem might be a regional one came with the analysis of white teenage employment, where it was observed that employment declined five percentage points in rural Northcentral regions, while nonetheless increasing in the relatively urban East Northcentral area. There was, in fact, a dramatic change in the nature of farming over those twenty years. Mechanization increased while agricultural employment declined by more than half. In the South, farm employment fell by 65 percent. This was due in great part to the importance of cotton production, for it was in cotton that the greatest technological changes occurred, and on cotton that black-operated farms were in great part dependent.

> In 1950 less than 1 percent of all cotton in the South was harvested by machine. By 1962, it had risen to 55 percent and by 1970 most all cotton was mechanically harvested. The adoption of the mechanical cotton picker, along with developments which enabled chemical and oil herbicides to be applied mechanically, reduced labor utilization in cotton significantly. During the period 1950-54, an average of 107 man-hours of labor were used to produce a bale of cotton. By 1970-74 only an average of 23 man-hours were so used.

In 1950, 46 percent of working teenage blacks found their employment in agriculture, and 90 percent of these worked in the South. Within the South itself, over half of employed black teenagers worked in agriculture, and over half of these were unpaid family laborers, putting in at least 15 hours a week. Thus, the decline of the male youth employment-to-population ratios in the South, from 54.8 in 1950 to 27.4 in 1970, would seem in great part explained by the new technological emphasis in farming, particularly as the black teenage employment-to-population ratios *increased* in both the Northeast and West, and only declined slightly, from 28.1 to 27.8, in the Northcentral region during this same period.

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Further evidence comes in the form of population and demographic statistics. During those same twenty years, the black teenage population increased 89 percent, while the total U.S. population increased by only 40 percent. Black teenagers in the North, however, swelled their numbers by 215 percent, and almost all of this new total took up residence in urban areas. Yet black teenage employment-to-population ratios in these areas did not decline. Instead, these areas of "decay" absorbed this massive influx. This also seems to contradict the widely held belief that welfare was responsible for growing unemployment, for the welfare participation rates grew three times faster in the North than the South.

Most interesting is that this employment differential seems to have existed prior to the growth in welfare rolls, the increased black teenage population, and the supposed "deterioration of employment opportunities in Northern central cities." Instead,

> The large gap in aggregate teenage employment ratios between the races that emerges by 1970 existed outside the South as early as 1950. In 1970 the aggregate white teenage employment ratio exceeded the aggregate black teenage employment ratio by 13 percentage points. This is precisely the magnitude of the racial employment differential outside the South in 1950. In short, large racial differences in teenage employment in the North have existed since at least 1950. . . .
>
> The picture portrayed by the region specific ratios is clear: The primary source of the decline in black teenage employment during the period 1950-1970, both in absolute terms and relative to white teenagers, lies almost exclusively in the South. Contrary to popular belief, Northern industrial labor markets showed a remarkable ability to absorb the large influx of black teenagers.

Cogan's study goes on to analyze why these displaced teenagers were not absorbed into other nonagricultural jobs. Regression analysis shows the increased coverage provided by the minimum wage throughout this period (as opposed to the level thereof, which remained constant relative to the average manufacturing wage) to be the significant variable. As he points out, "the raw data reveal significant reductions in black teenage employment growth in precisely those industries where coverage of the minimum wage was increased: retail trade, construction, and the service sector." In short, Cogan estimates that half the decline in the aggregate black teenage employment ratio during this period may be attributed to technological changes in agriculture, while the other half is the responsibility of the increased coverage of federal minimum wage laws.

This study does not attempt to explain the problematic nature of this constant discrepancy between white and black teenage employment levels. However, we can be fairly certain that the severe drop in black employment rates is the nationalization of an old problem, rather than a product of growing social and urban decay.

—Heather S. Richardson

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The "Corpse" Kicks Back

West Middletown, Pennsylvania, is an American historian's dream. During the mid-1800's it was a commercial center and an important stop both for pioneers headed West and slaves headed North. Though quieter now, and smaller by a third, it still looks a lot like it used to. Only one road is paved, the old structures are still standing, and a scant eleven buildings have been constructed since 1900. Not even its inhabitants have changed much; the descendents of some of those same merchants and slaves still live there, as does the 62-year-old great-great-great-granddaughter of the town's founder.

But now West Middletown's future is uncertain. The *Wall Street Journal* (January 11, 1982) reports that the inevitable has happened —it has been discovered by preservationists.

> The town "is pure 19th Century, and that's very rare," says Arthur Ziegler, the director of the Pittsburgh History and Landmarks Association. "There's hardly any place like this anywhere in the country."
>
> Mr. Ziegler and others, however, fear that West Middletown's quaint charm won't last much longer. At least a dozen of the 79 buildings here are vacant and in need of repair. Many others, occupied by aged residents, may be empty soon. To arrest decay, historical preservationists in Pennsylvania's Department of Community Affairs want the town declared a historical site, a designation that could bring with it government help for restoration projects and a ban on construction of modern eyesores.

Here, however, the inevitable ends; the preservationists are being resisted. It seems that West Middletown's quaint old-time residents "shudder at the thought of 'historical landmark' plaques nailed to their houses." Explains Nancy Smith, the founder's descendent:

> This isn't a public museum; it's our home. . . . We don't want bus loads of tourists or the government telling us what we can and can't do with houses we've lived in all our lives. Sure, there's lots of history here, but people 25 miles away don't know about it, and that's not a bad thing.

The *Journal* observes:

> People here place a premium on self-reliance—everyone maintains his own well and sewage system—and they take pride in keeping things as they always have been. Many houses are furnished in inherited antiques, and although most dwellings have electricity, one-third lack indoor bathrooms. And as one homeowner says, "You don't fix things unless they need fixing."

It is precisely this attitude that the preservationists fear:

> A number of buildings, including an inn built in 1801 and a house dating to 1798, are owned by absentee landlords who have left buildings either vacant or in the hands of neglectful tenants, Mr. Golden says. Some of the vacant structures are so decayed that restoring them

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would require brick-by-brick reconstruction. Others already may have rotted beyond repair.

For now, however, it seems that they are alone in their worry. "'We came on like gangbusters, thinking we were offering protection,' recalls William Morrison, who at the time was with Community Affairs. 'We were told to get out.'"

Democracy in America—Revisited

Alexis de Tocqueville, that nineteenth-century sage on American manners and mores, once observed approvingly that "Americans of all ages, all conditions, and all dispositions constantly form associations." He marveled that "wherever at the head of some new undertaking you see the government in France, or a man of rank in England, in the United States you will be sure to find an association." A look through the latest, 1631-page, *Encyclopedia of Associations* proves, once again, the prescient genius of the man, yet one wonders if he still would look upon us so favorably. Here follow a few randomly selected entries from that work:

Cling Peach Advisory Board. One California Street, San Francisco, California, 94111. Founded: 1945. Members: 1032. All growers and canners of cling peaches in California. Promotes sale of canned cling peaches and fruit cocktail; conducts quality control and research programs.

Childhood Sensuality Circle. P.O. Box 5164, San Diego, California, 92105. Founded 1971. Persons who, for personal or social reasons, are interested in children's total liberation, with emphasis on their sexual liberation. Acts as a lay research group. Maintains library of 300 volumes on children's liberation and pedophilia. Gathers news for publications. Publications: newsletter, bimonthly. Formerly: Childhood Sexuality Circle.

Fruitarian Network. Box 4333, Washington, D.C. 20012. Founded: 1976. Members: 6000. Vegetarians who promote and follow a fruitarian diet for health and ethical reasons. Fruitarians believe that killing plants for food is unethical. Diet consists of any plant product which drops off its tree, vine or stem naturally without involving destruction of the plant. Acceptable food include apples, beans, berries, corn, nuts, peas and tomatoes. Members feel that most fruit foods are healthier than many vegetables and that fruit trees make the best use of land by yielding more food per acre, preventing erosion and providing an environment for wildlife. Promotes abolishment of lawnmowing in an effort to encourage growth of trees, preserve natural resources (such as the oil that powers lawnmowers), preserve wildlife environments and, on a broader scope, help to end deterioration of current weather patterns by protecting water tables. Publications: newsletter, irregular.

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